111-746

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1883.

No. 627.

THE BUTCHERS' UNION SLAUGHTER-HOUSE AND LIVE-STOCK LANDING COMPANY, APPELLANTS,

vs.

THE CRESCENT CITY LIVE-STOCK LANDING AND SLAUGHTER-HOUSE COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED OCTOBER 2, 1882.

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A United States of America. Circuit Court of the United States, fifth circuit and eastern district of Louisiana.

THE CRESCENT CITY LIVE-STOCK LANDING AND SLAUGHTER-HOUSE COMPANY
versus
THE BUTCHERS' UNION SLAUGHTER-HOUSE AND LIVE-STOCK LANDING COMPANY. } No. 9691.

B. R. Forman, esq., for defendants, appellants.
Mott & Kelly, esqs., for complainants, appellees.

Transcript of appeal, returnable to the Supreme Court of the United States the second Monday of October, 1882.

1 United States of America. Circuit Court of the United States, fifth circuit and eastern district of Louisiana.

THE CRESCENT CITY LIVE-STOCK LANDING AND SLAUGHTER-HOUSE CO.
versus
THE BUTCHERS' UNION SLAUGHTER-HOUSE AND LIVE-STOCK LANDING CO. } No. 9691.

Bill of Complaint.—Filed November 23d, 1881.

To the judges of the Circuit Court of the United States for the fifth circuit and eastern district of Louisiana.

The Crescent City Live-stock Landing and Slaughter-house Company, a body corporate under the laws of the State of Louisiana, and a citizen of said State, and thereupon your orators complain and say—

That the said Crescent City Live-stock Landing and Slaughter-house Co. was incorporated by an act of the General Assembly of the State of Louisiana, approved March 8th, 1869, being act No. 118 of that
2 year; that by the terms of said act the said company was required to build and maintain slaughter-houses, yards, sheds, pens, landings, etc., for carrying out the purposes of the act, and to have and maintain at least one slaughter-house of a capacity adequate for slaughtering five hundred animals a day, all of which constructions by the terms of said act, and of acts amendatory thereof, were to be located below the United States barracks on the east and below the depot of Morgan's Louisiana and Texas Railroad on the west side of the Mississippi River, and that the said company was by the said acts also required to sue for, and as far as practicable prevent all violation of the provisions of said act No. 118 of 1869, prohibiting the slaughtering of all animals anywhere within the parishes of Orleans, Jefferson, and St. Bernard outside of the said limits so as aforesaid established by said acts, or at any place or places other than in the slaughter-houses of said company.

3 And your orators further say that in consideration of the premises, and of the large outlay required to be made by said company out of its corporate funds by the terms of said act No. 118 of 1869, for the purposes considered by the legislature to concern the public health, convenience, and general welfare of the body of the population of the city of New Orleans and vicinity, the State of Louisiana did by said act grant unto said company for a term of twenty-five years from the date of the passage of said act, to wit, March 8th, 1869, the exclusive right and privilege of having and maintaining slaughter-houses, yards, sheds, and landings for the landing, yarding, sheltering, and slaughtering of all animals intended for live man food in the parishes of Orleans, Jefferson, and St. Bernard.

Your orators further say that the said act No. 118 of 1869 embodies a contract between the State of Louisiana and said Crescent City Live-stock Landing and Slaughter-house Company, and that it was fully within the competency of the General Assembly
4 of the State of 1869, for and upon the considerations set forth in said act, to grant to the said company for the term therein specified the exclusive rights and privileges set forth in the act as aforesaid, and that the said contract was and is valid and binding upon and between the parties thereto, and has been so held to be alike by the Supreme Courts of the State and of the United States.

Your orators further say that upon the faith of said contract, and for and in consideration of the right granted to them by said act to have and enjoy the exclusive privileges therein mentioned for the term therein specified, the said company purchased the necessary lands and erected thereon the requisite buildings and other constructions to enable it to comply, as it has hitherto complied, with all the requirements of the said contract with the State of Louisiana, and that in so doing the said company has expended of its corporate funds over a half a million of dollars.

5 And your orators further say that by reason of said grant of exclusive rights and privileges for the period aforesaid, and of the said expenditures of the corporate funds aforesaid for the purposes aforesaid, and of the successful prosecution by said company of the business of stock landing and slaughtering, as authorized by said act, the capital stock of said company, consisting of ten thousand shares of the par value of fifty dollars a share, became and was very valuable, and was invested in and is now held by numerous persons, citizens of Louisiana, of other States, and of foreign countries.

Your orators further say that their slaughter-houses, yards, sheds, landings, etc., have been erected and in use for over ten years, and were and are adequate and sufficient for all the purposes contemplated by said contract between the State of Louisiana and said company, so as aforesaid embodied in said act No. 118 of 1869.

6 And your orators further say that prior to the passage of said act it had been, upon consideration of public health, comfort, convenience and well-being of the great body of the population of the city of New Orleans and vicinity, the settled policy

of the State of Louisiana, evidenced by various acts of its legislatures, to limit and confine the business of live-stock landing and slaughtering for the supply of said population to localities below or near to the lower boundaries of said city, the lower portions of said city being then more sparsely populated than at present, but that it had been found impracticable to enforce said policy of the State, or to effectually confine the carrying on of said business of stock landing and slaughtering within the limits designated by law; and your orators say that not until the adoption of said act No. 118 of 1869, whereby the duty was imposed upon said Crescent City Live-stock Landing and Slaughter-house Company of enforcing the provisions of said act limiting the business of stock landing and slaughtering to the localities specified in the act, has the policy of the State to confine the said business within the limits established by law effectively enforced.

7

And your orators further say that it has recently been decided by the Supreme Court of Louisiana, in a suit between the Crescent City Live-stock Landing and Slaughter-house Company and the city of New Orleans, that so much of said act No. 118 of 1869 as limits the business of stock landing and slaughtering in the parishes of Orleans, Jefferson, and St. Bernard to localities below the United States barracks on the left bank and below the depot of Morgan's Louisiana and Texas Railroad on the right bank of the Mississippi River, has not been repealed or modified by any subsequent legislation, constitutional or otherwise, but remains and is in full force and effect.

But your orators further say that lately the said Butchers' Union Slaughter-house and Live-stock Landing Company, confederating and combining with members of the city council of the city of New Orleans and of the State board of health, to the wrong and injury of your orators, in disregard of said decision of the Supreme Court of Louisiana and of the exclusive rights and privileges so as aforesaid granted to said Crescent City Live-stock Landing and Slaughter-house Company, have applied to the said city council of New Orleans to establish by ordinance, with the concurrent approval of the said board of health, certain boundaries, outside of the said limits established by said act No. 118 of 1869, and acts amendatory thereof, and within the corporate limits of the city of New Orleans, and above the United States barracks, within which the said Butchers' Union Slaughter-house Company and other individuals and companies may be allowed to carry on said business of live-stock landing and slaughtering for the supply of the population of the city of New Orleans and vicinity.

8

And your orators further show that the said city council, upon the application of the said Butchers' Union Slaughter-house and Live-stock Landing Company and others have recently passed two certain ordinances, subject to the concurrent approval of the State board of health, whereby the said city council, in open disregard of said recent decision of the Supreme Court of Louis-

9

iana, to the effect that so much of said act No. 118 of 1869, and acts amendatory thereof, as forbids the carrying on of the live-stock landing and slaughtering business anywhere within the parishes of Orleans, Jefferson, and St. Bernard, above the United States barracks on the east bank and above the depot of Morgan's Louisiana and Texas Railroad on the west bank of the Mississippi River, is still in full force and effect, and in disregard of the exclusive rights and privileges aforesaid of said Crescent City Live-stock Landing and Slaughter-house Company, assume to establish certain limits within said city of New Orleans, and outside of said limits established by said act No. 118 of 1869, and acts amendatory thereof, within which it shall be lawful for any individual or individuals, company or compa-
10 nies, to construct and maintain stock landings, yards, sheds, etc., and slaughter-houses or abatoirs, and to carry on the business of live-stock landing and slaughtering, upon complying with the conditions set forth in said ordinances.

Your orators further say that neither of said ordinances had hitherto received the concurrent approval of the State board of health, subject to which they were passed.

But your orators aver that at a conference held at the city hall of the city of New Orleans on the 18th of November, 1881, between a certain committee of said board of health and the members of the city council, a certain ordinance was agreed upon, and afterwards, upon the same day, adopted by the city council, amending ordinance No. 7376 so as to read: "That Reynes street shall be the upper limit in the parish of Orleans for the location of slaughter-houses, in lieu of Poland street."

11 And your orators say that they believe upon information, and therefore aver, that said ordinance of the city council No. 7376, as amended as aforesaid, will meet with the concurrence and approval of the said board of health; and that, thereupon, the said Butchers' Union Slaughter-house and Live-stock Landing Company will, unless restrained therefrom by a writ of injunction from this court, proceed at once to erect and construct slaughter-houses, yards, sheds, pens, landing, etc., at a point within the corporate limits of the city of New Orleans, on the left bank of the Mississippi River and above the United States barracks, and there conduct and carry on the business of live-stock landing, yarding, sheltering, and slaughtering in open disregard of the prohibitions of said act No. 118 of 1869, recently held by the Supreme Court of the State to be still in full force and effect, and of the exclusive rights and privileges of said Crescent City Live-stock Landing and Slaughter-house Company, granted to it as aforesaid by the terms of the contract between the said company and the State, embodied in said act No.
12 118 of 1869.

Your orators further say that the said confederates pretend, in justification of their acts and purposes in the premises, that said act No. 118 of 1869 did not create a contract between the State and said company; that the said act amounted to a devestiture by

the legislature of 1869 of the policy powers of the State, and that said legislature could not irrevocably or for a limited time divest the State of its police powers, nor prevent subsequent legislatures from revoking the privileges granted by said act; that by article 248 of the constitution of the State of 1879 it is provided "that the constituted authorities of all incorporated municipalities of the State shall alone have the power of regulating the slaughtering of cattle and other live stock within their respective limits, *provided* no monopoly or *de*lusive privilege shall exist in this State, nor such business be restricted to the land or houses of any individual or corporation, provided the ordinances designating the places for
13 slaughtering shall obtain the concurrent approval of the board of health or other sanitary organization;" that the aforesaid article of the constitution is binding upon all the inhabitants of the State, whether individuals or bodies corporate, and amounts to a *revocation of the powers granted to said company, and repeals the monopoly or exclusive privilege created by said statute* in plaintiff's favor, and that the ordinances aforesaid, designating localities within the corporate limits of the city of New Orleans, and outside of the limits established by said act 118 of 1869, and acts amendatory thereof, within which the business of live-stock landing and slaughtering may be carried on by any person or company complying with the conditions of the ordinances are valid and binding ordinances, and that when concurred in and approved by the said board of health, any person or company upon complying with the conditions prescribed may lawfully carry on the said business of live-stock landing and
14 slaughtering within the limits assigned by such ordinances.

Whereas your orators charge the truth to be, that said act No. 118 of 1869 does embody a contract between the State of Louisiana and the Crescent City Live-stock Landing and Slaughter-house Company valid and in every way binding upon the parties thereto; that it was entirely within the competency of the General Assembly of the State of Louisiana of 1869, for and upon the considerations stated in said act No. 118 of 1869, to grant as it did grant to said company the exclusive rights and privileges specified in the act for the term therein mentioned, and that it has been so expressly held and decided, alike by the Supreme Courts of the State and of the United States, that the said grant was so made by the State not in derogation or diminution of its police power, but in furtherance and execution thereof, and that in the furtherance and execution of said police power the said company, as the agent and instrument of the State
15 and in aid and enforcement of its policy in the premises, have expended over half a million dollars of the corporate funds of the company as aforesaid; that said contract between the State of Louisiana and the Crescent City Live-stock Landing and Slaughter-house Company is under the protection and safeguard of the tenth section of the first article of the *construction* of the United States, which forbids a State to pass any law impairing the obligation of contracts, and that this prohibition applies alike to constitutional as

to ordinary State legislat*ure*, and that therefore the said art. 248 of the constitution of Louisiana of 1879, and any and all other provisions of said constitution, and any and all laws, ordinances, or resolutions passed in obedience to or in pursuance thereof, are, in so far as they may have been intended or are susceptible of being construed to abrogate said contract, or in anywise to impair the obligations thereof, null and and void for repugnancy to said section ten, article one, of the constitution of the United States.

16 And your orators further say that as the main if not sole question involved in this suit are whether or not the obligations of said contract between the said company and the State of Louisiana are under the safegnard and protection as aforesaid of the constitution of the United States, and whether or not said article 248 of the constitution of the State of Louisiana of 1879, and any and all other provisions of said constitution, and any and all laws, ordinances, and resolutions passed in pursuance thereof, are void, in so far as intended or susceptible of being construed to abrogate said contract or to impair the obligations thereof, this case is one arising directly under the constitution of the United States, and this court has jurisdiction thereof, irrespective of citizenship of the parties.

To the end, therefore, that your orators may have that relief which they can only obtain in a court of equity, and that the defendants may answer the premises, but not under oath or affirmation,

17 the benefit whereof is hereby expressly waived, and that it may be decreed that said act No. 118 of 1869 of the General Assembly of the State of Louisiana of that year embodies a contract between said State and the said company valid and binding upon the parties thereto, and that by virtue of and under the terms of said contract the said company is entitled for a term of twenty-five years from the 3d of March, 1869, the date of the approval of said act, to the exclusive right and privilege of constructing and maintaining within the parishes of Orleans, Jefferson, and St. Bernard, and within the limits prescribed by said act and acts amendatory thereof, stock landings, yards, pens, sheds, slaughter-houses, and of conducting and carrying on within said limits the business of live-stock landing and slaughtering, and that said grant was one which was within the competency of the General Assembly of the State of Louisiana of 1869 to make to said company for and upon the consideration stated in said act, and that the obligations of said contract embodied in

18 and evidenced by said act No. 118 of 1869, were and are under the safeguard and protection of section ten, article one, of the constitution of the United States, which forbids a State from passing any law impairing the obligations of contracts; and that art. 248 of the constitution of Louisiana of 1879, and any and all other provisions of said constitution, and any and all laws, resolutions, and ordinances intended or liable to be construed to abrogate said contract, or in anywise to impair the obligation thereof, are null and void for repugnancy to said section ten, article one, of

the constitution of the United States, and that complainants are entitled to restrain by writ of injunction the said Butchers' Union Slaughter-house and Live-stock Landing Company from in any way infringing upon the exclusive rights and privileges so as aforesaid granted to said Crescent City Live-stock Landing and Slaughter-house Company of said act No. 118 of 1869.

May it please your honors to grant unto your orators *or*
19 writ of injunction issuing out of and under the seal of this honorable court, to be directed to the said Butchers' Union Slaughter-house and Live-stock Landing Company, commanding them, their officers, agents, and employees, and each of them, absolutely to desist and refrain from constructing, or erecting or maintaining, anywhere within the limits of the parishes of Orleans, Jefferson, and St. Bernard, any stock landings, yards, pens, sheds, slaughter-houses, abatois, or such structures, or from conducting or carrying on anywhere within said parishes the business of stock landing and slaughtering, except at the slaughter-houses, landings, and premises of the said Crescent City Live-stock Landing and Slaughter-house Company, and upon the terms and conditions set forth in said act No. 118 of the legislature of Louisiana of 1869, and that until such time as a motion for injunction herein can be heard and determined, a restraining order issue restraining defendants, their agents, officers, and employees, *and* prayed for.

20 And may it please your honors to grant unto your orators a writ of subpœna, to be directed to the said Butchers' Union Slaughter-house and Live-stock Landing Company, commanding them at a certain time, and under a certain penalty therein to be limited, to appear before this honorable court and then and there full, true, direct, and perfect answer make to all and singular the premises, and further to stand to, perform, and abide such further order, direction, and decree therein as to this honorable court may seem meet.

(Signed) MOTT & KELLY, *Solicitors.*

Joseph Hernandez, being sworn, says that he is president of the Crescent City Live-stock Landing and Slaughter-house Company in the foregoing bill mentioned, and that the facts therein averred as of the knowledge of complainants are true, and that the facts averred as upon information are believed to be true.

(Signed) J. HERNANDEZ, *President.*

21 Sworn to and subscribed before me this 21st November, 1881.

(Signed) F. D. SEGHERS, *Not. Pub.*

Motion and Order for Preliminary Injunction.

Extract from the Minutes, November Term, 1881.

NEW ORLEANS, THURSDAY, *Nov. 24th*, 1881.

Court met pursuant to adjournment. Present: Hon. Don A. Pardee, circuit judge.

CRESCENT CITY LIVE-STOCK LANDING CO. & SLAUGHTER-HOUSE CO.
vs.
BUTCHERS' UNION SLAUGHTER-HOUSE & LIVE-STOCK LANDING CO. } No. 9691.

On reading the bill herein filed, verified on oath, it is ordered, on motion of Mott & Kelley, solicitors for complainant, that Monday, December 19th, 1881, at 11 A. M., be assigned for hearing motion for a preliminary injunction herein, as prayed for in the bill, and that said defendants be notified hereof by service of a copy of this order on Aman Troescher, president of the Butchers' Union Slaughter-house & Live-stock Landing Company, defendants herein.

22 *Order Case Continued.*

Extract from the Minutes of December 19th, 1881.

CRESCENT CITY LIVE-STOCK LANDING & SLAUGHTER-HOUSE CO.
vs.
BUTCHERS' UNION SLAUGHTER-HOUSE & LIVE-STOCK LANDING CO. } No. 9691.

This cause came on to be heard on the complainant's application for a preliminary injunction.

Mott & Kelly & T. J. Semmes, for complainants.

B. R. Forman, for defendants.

And thereupon it was argued by counsel for the parties respectively that the matter stand over until Wednesday, 21st, at 12.30 P. M.

Continuance of Case.

Extract from Minutes of December 21st, 1881.

CRESCENT CITY LIVE-STOCK LANDING & SLAUGHTER-HOUSE CO.
vs.
BUTCHERS' UNION SLAUGHTER-HOUSE & LIVE-STOCK L'D'G CO. } No. 9691.

By consent of counsel the application for injunction *pendente lite* goes over till to-morrow at 12 M.

23 *Affidavit in opposition to Injunction.*—Offered by defendants Dec'r 22d, 1881.

United States Circuit Court, fifth circuit, eastern district of Louisiana.
No. 9691. In equity.

THE CRESCENT CITY LIVE-STOCK LANDING & SLAUGHTER-HOUSE CO.

The defendants oppose and resist the application of the complainants for an injunction.

1. Because there is no equity in the bill.

2d. The court has no jurisdiction, because both complainants and defendants are citizens of Louisiana.

3d. Substantially the same matters and things are now pending between the plaintiff and defendant in the Civil District Court for the parish of Orleans, No. of the docket.

4. The complainant has since 1876 forfeited its exclusive privileges and alleged franchises by removing and tearing down the slaughter-houses and facilities for slaughtering animals on
24 the right or west bank of the Mississippi River, in accordance with the decree of the Supreme Court of Louisiana, in 28 A., 210, which decree it has never obeyed.

5. The original grant of exclusive privileges set up and claimed under act 118, 1869, was in the exercise of the police power of the State, and not the subject of contract, and the monopoly and exclusive privilege claimed by plaintiff has been annulled and repealed by articles 248 and 258 of the State constitution, 33 A., 934, and so decided in a litigation provoked by complainant. (16 Wallace, 36; Slaughter-house Cases; Boyd *vs.* Ala., 94 U. S., 645; Beer Co. *vs.* Mass., 97 U. S., 25, 659; Stone *vs.* Miss., 101 U. S., 814.)

6. The city council has passed an ordinance designating the places where slaughter-houses may be established and kept within the parish of Orleans and city of New Orleans, which ordinance fixes the limits at Reynes street, lower line of the parish of Orleans, Mississippi River and Good Children street, which ordinance has
25 received the concurrent approval of the board of health.

7th. Defendant does not intend, propose, or threaten in any way to interfere with the property or business of the complainant, but only intends, pursuant to the ordinances of the city council, to pursue the lawful business of slaughtering animals for food and keeping abattoirs or slaughter-houses within the limits and pursuant to the regulations prescribed by the municipal authorities; and defendant has bought ground within those limits and erected a building, and is in possession of the right to keep a slaughter-house, the value of which property exceeds ten thousand dollars, and their property will be rendered valueless and their corporate franchises destroyed if this injunction prayed for be allowed.

8th. If complainant had any right, it has a plain, adequate, statutory remedy at law.

(Signed) B. R. FORMAN,
Solicitor for Defendant.

26 Aman Troescher, being sworn, says he is president of the defendant company, and all of the foregoing allegations are true.

(Signed) AMAN TROESCHER.

Sworn to and subscribed before me this 17th day of December, 1881.

[SEAL.] (Signed) N. B. TRIST,
2 *Not. Pub.*

City Ordinances Offered by Defendant December 22d, 1881.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *September 13th*, 1881.

(No. 7336.—Administration series.)

An ordinance designating the places for slaughtering animals intended for food in the parish of Orleans, under article 248 of the constitution.

SECTION 1. *Be it ordained by the common council of the city of New Orleans*, That it shall be lawful for any person or corporation to erect, keep, and maintain slaughter-houses, abattoirs, live-stock landings, and pens within the following limits: The lower line of Poland street, the Mississippi River, and Good Children street, on the
27 left or east bank of the river, and below the depot of Morgan's Texas Railroad on the right bank of the river.

SEC. 2. That all slaughter-houses, abattoirs, live-stock landings, and pens or other places keeping, preserving, or slaughtering animals intended for food in the parish of Orleans shall be provided with adequate steam pumps and water pipes, and an abundant supply of water, cold and warm, for flushing and daily washing and keeping clean and healthy such places, with large closed pipes leading into the river below low-water mark, amply sufficient for carrying off into deep water all the washings and water used in washing and flushing, and shall, moreover, be provided with a nuisance boat, or barge or barges, constructed in a manner similar to the one now in use by the city and vidangeurs, amply sufficient to hold and contain and carry off daily all offal, filth, and waste of such slaughter-houses or abattoirs, and no such offal or filth shall be emptied into the river within the limits of the parish of Orleans, but the same shall be daily emptied into a nuisance boat or barge and
28 daily towed and emptied into the middle of the river below the parish of Orleans. Such places shall be subject to such further sanitary regulations as may hereafter be prescribed by the municipal authorities.

SEC. 3. Any person who shall slaughter any cow, bull, steer, beef, calf, sheep, lamb, hog, goat, kid, or other animal within the parish of Orleans, above or outside of the limits designated in section first of this ordinance, or outside of slaughter-houses or abattoirs provided with the cleaning apparatus and boats or barges required in section second, or who shall fail to tow away or empty daily all the offal and filth in the middle of the river below the parish of Orleans, shall be fined, on conviction before any recorder or police magistrate, not more than twenty-five dollars, and imprisoned not more than thirty days, or both, at the discretion of the recorder.

SECTION 4. The first section of this ordinance shall be submitted to the concurrent approval of the board of health or other sanitary organization.

29 SECTION 5. All laws, ordinances and regulations inconsistent with this ordinance are repealed.

SECTION 6. The mayor shall appoint, with the advice and consent of the common council, one or more veterinary surgeons, or other persons skilled in knowledge of the diseases of cattle, inspectors of cattle, whose duty it shall be to inspect all animals intended for food before and after being killed, and who shall have power to destroy and have thrown into the nuisance boat any diseased or unhealthy meat unfit for food. The said inspector shall receive as his compensation a fee of five cents for each and every head of stock to be inspected, the said fee to be paid to the said inspector by the owner or possessor of said stock slaughtered.

Adopted by the council of the city of New Orleans, September 13, 1881.

Yeas—Delamore, Fagan, Fitzpatrick, Guillotte, Huger, Walshe.
Absent—Mealey.

JOS. A. SHAKESPEARE,
Mayor.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *October* 13, 1881.

(No. 7376.—Administration series.)

An ordinance amending the first section of city ordinance No. 7336, administration series:

Be it ordained by the common council of the city of New Orleans, That the first section of ordinance No. 7336 be amended and reenacted so as to read as follows:

"It shall be lawful for any person or corporation to erect, keep and maintain slaughter-houses, abattoirs, live-stock landings and pens within the following limits: The lower line of the parish of Orleans, Poland street, the Mississippi River and Good Children street, on the left or east bank of the river, and below the depot of Morgan's Texas Railroad on the right or west bank of the river."

Adopted by the council of the city of New Orleans, October 11, 1882.

Yeas—Delamore, Fagan, Fitzpatrick, Guillotte, Huger, Mealey, Walshe.

JOS. A. SHAKESPEARE,
Mayor.

A true copy.

M. McNAMARA,
Secretary.

Promulgated 13th October, 1881.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *November* 18, 1881.

(No. 7437.—Administration series.)

Be it ordained, That ordinance No. 7376 be amended so as to read that Reynes street shall be the upper line in the parish of Orleans for the location of slaughter-houses, in lieu of Poland street.

Adopted by the council of the city of New Orleans, November 17, 1881.

Yeas—Fagan, Fitzpatrick, Huger and Walshe.

Nays—Delamore, Guillotte.

JOS. A. SHAKESPEARE,
Mayor.

A true copy.

M. McNAMARA,
Secretary.

Promulgated Nov. 18th, 1881.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *September* 13, 1881.

(No. 7336.—Administration series.)

An ordinance designating the places for slaughtering animals intended for food in the parish of Orleans, under article 248 of the constitution:

32 SECTION 1. *Be it ordained by the common council of the city of New Orleans*, That it shall be lawful for any person or corporation to erect, keep, and maintain slaughter-houses, abattoirs, live-stock landings and pens within the following limits: The lower line of the parish of Orleans, Reynes street, the Mississippi River, and Good Children street on the left or east bank of the river, and below the depot of Morgan's Texas Railroad.

SEC. 2. That all slaughter-houses, abattoirs, live-stock landings, and pens or other places, keeping, preserving, or slaughtering animals intended for food in the parish of Orleans, shall be provided with adequate steam pumps and water pipes, and an abundant supply of water, cold and warm, for flushing and daily washing and keeping clean and healthy such places, with large closed pipes leading into the river below low-water mark, amply sufficient for carrying off into deep water all the washings and water used in washing and flushing, and shall, moreover, be provided with a nuisance
33 boat, or barge or barges, constructed in a manner similar to the one now in use by the city vidangeurs, amply sufficient to hold and contain and carry off daily all offal, filth, and waste of such slaughter-houses or abattoirs.

And no such offal or filth shall be emptied into the river within the limits of the parish of Orleans, but the same shall be daily emptied into a nuisance boat or barges and daily emptied into the middle of the river below the line of the parish of Orleans.

Such places shall be subject to such further sanitary regulations as may hereafter be prescribed by the municipal authorities.

SEC. 3. Any person who shall slaughter any cow, bull, steer, beef, calf, sheep, lamb, hog, goat, kid, or other animal within the parish of Orleans, above or outside of the limits designated in section first of this ordinance, or outside of slaughter-houses or abattoirs provided with the cleansing apparatus and boats or barges required in section

second, or who shall fail to tow away or empty daily all the offal and filth in the middle of the river below the parish of Orleans,
34 shall be fined, on conviction before any recorder or police magistrate, not more than twenty-five dollars and imprisoned not more than thirty days, or both, at the discretion of the recorder.

SEC. 4. The first section of this ordinance shall be substituted to the concurrent approval of the board of health or other sanitary organization.

SEC. 5. All laws, ordinances, and regulations inconsistent with this ordinance are repealed.

SEC. 6. The mayor shall appoint, with the advice and consent of the common council, one or more veterinary surgeons, or other persons skilled in knowledge of the diseases of cattle, inspectors of cattle, whose duty it shall be to inspect all animals intended for food before and after being killed, and who shall have power to destroy and have thrown in the nuisance boat any diseased or unhealthy meat unfit for food. The said inspector shall receive as his compensation a fee of five cents for each and every head of stock to be inspected, the said fee to be paid to the said inspector by the
35 owner or possessor of said stock slaughtered.

Adopted by the council of the city of New Orleans, September 13, 1881.

Yeas—Delamore, Fagan, Fitzpatrick, Guillotte, Huger, Walshe.
Absent—Mealey.

JOS. A. SHAKESPEARE,
Mayor.

A true copy.

W. JOHN McCALL,
Ass't Sec'ry.

Promulgated 14th Sept., 1881.

I, Joseph A. Shakspeare, mayor of New Orleans, do hereby certify that the foregoing and annexed are true and correct copies of ordinances No. 7336, No. 7376, and 7437, administration series, and No. 7336, as amended by the last two ordinances and adopted by the common council or board of administrators on the days therein named, and duly promulgated and approved by the board of health of the State of Louisiana.

In testimony whereof I have hereunto set my hand and the seal of the city of New Orleans this 1st day of December, 1881.

(Signed) JOSEPH A. SHAKESPEARE, [SEAL.]
Mayor.

36 OFFICE BOARD OF HEALTH,
STATE HOUSE, STATE OF LOUISIANA,

S. S. Herrick, M. D., Sec. & Treasurer.
Joseph Jones, M. D., President.

NEW ORLEANS, 25 *November*, 1881.

At a meeting of the board of health of the State of Louisiana this

25 November, 1821, all the members present, the following resolution was adopted:

Resolved, That this board of health concur in and approve ordinance No. 7376, administration series, adopted by the hon. common council October 11th, 1881, defining certain slaughter-house boundaries, and which was amended by ordinance No. 7437, administration series, adopted by the hon. city council November 17th, 1851, ordinance 7437 reading as follows:

Be it ordained, That ordinance No. 7376 be amended so as to read that Reynes street shall be the upper limit in the parish of Orleans for the location of slaughter-houses, in lieu of Poland street.

The effect of which amendment is to make ordinance No. 7376, now concurred in and approved, read as follows:

Be it ordained, It shall be lawful for any person or corpo-
37 ration to erect, keep, and maintain slaughter-houses, abattoirs, live stock landings, and pens within the following limits: The lower line of the parish of Orleans, Reynes street, the Mississippi River and Good Children street, on the left or east bank of the river, and below the depot of Morgan's Texas Railroad on the right or west bank of the river."

Yeas—Booth, Bosworth, Faget, Formento, Marks, and Pratt.

Nays—Jamison and Hernandez.

A true copy:

JOSEPH JONES, M. D.,
President Board of Health, State of Louisiana.
S. S. HERRICK, M. D.,
Sec'y and Treas.

Hearing and submission of Application for Injunction.

Extract from Minutes of December 22d, 1881.

CRESCENT CITY LIVE-STOCK LANDING AND SLAUGHTER-HOUSE CO.
vs.
BUTCHERS' UNION SLAUGHTER-HOUSE AND LIVE-STOCK LANDING CO.
No. 9691.

38 This cause came on this day to be heard on the complainant's application for an injunction pendente title, and was argued by Thos. J. Semmes and Robert Mott on behalf of said complainant, and B. R. Forman on behalf of said defendants, and submitted, and the court took time to consider.

Opinion.—Filed Dec'r 29th, 1881.

United States Circuit Court, eastern district of Louisiana.

THE CRESCENT CITY LIVE-STOCK LANDING AND SLAUGHTER-HOUSE CO.
vs.
THE BUTCHERS' UNION LIVE-STOCK LANDING AND SLAUGHTER-HOUSE CO.

On application for injunction pendente lite.

We follow the decision of the Supreme Court of the State of Louisiana in the case of Slaughter-house Company *vs.* The City of New Orleans, as reported in the 33d La. Annual, p. 934, in these propositions:

1st. The charter of complainant, act No. 118 of 1869, Louisiana Laws, constitutes a contract.

39 2d. That the said charter contains monopoly features.

3d. That so far as said act or charter rests upon delegated police power of the State, it may be repealed or impaired by constitutional or legislative authority, without infringing on the constitution of the United States.

We concede the validity of article 248 of the Louisiana constitution as delegating the regulation of slaughter-houses to the various municipal authorities.

We doubt the validity of article 258 of the same constitution so far as any retroactive effect is claimed for it, and we deny that said article or pretends to be an exercise of the police power.

And we deny the efficacy of any of the ordinances of the city of New Orleans, as shown in this case, to in anywise deprive complainant of the rights given by his contract and charter, or to convey any of said rights or privileges to defendant.

In all the cases cited from the Supreme Court of the United
40 States, (16th Wallace, 57; 97th U. S., 25, 677; 101 U. S., 814,) bearing on exercise of police power, there is no decision, no argument even justifying the impairment of the obligations of a contract by the aid of the police power, in order to transfer property rights or privileges from one individual to another, or from one corporation to another.

In the case of the Beer Company *vs.* Massachusetts (97th U. S., 25) prohibitory law against the sale of malt liquors was maintained, notwithstanding complainant's charter.

In the case of Fertilizing Co. *vs.* Hyde Park (97 U. S., 677), a nuisance was allowed to be suppressed by village ordinance, notwithstanding a charter from the State to carry on a *fertilizing* business at that very place.

In Stone *vs.* Mississippi a penal law prohibiting lotteries was upheld, notwithstanding a charter from the State to carry on the lottery business.

In each of these cases the right of a State, by exercise of the police power, to suppress a business otherwise legitimate, was recog-
41 nized, although such business existed under chartered rights previously acquired.

But the proposition of the defendant goes much further, and it is that under the police power of the State, by virtue of arts. 248 and 258 of the State constitution, the contract privileges given by act 118 of 1869 to the complainant are not repealed, nor suppressed, nor policed, but distributed, and that therefore the defendant may lawfully take up the rights so by police power taken from complainant.

And it is to be particularly borne in mind that neither the place, nor the manner, nor the charges, nor the inspection, nor the business of complainant are in any way obnoxious. There is no nuisance, no vice, no illegality tainting the conduct of complainant's business, and consequently there is no question of public health, manners, or morals involved.

Under these circumstances, and with this view of the case, we incline to the opinion that defendant's pretensions cannot be
42 sheltered under a claimed exercise of the police power, and that if articles 248 and 258 of the constitution of Louisiana, and the city ordinances thereunder, are to have the effect claimed by defendant, then it would amount to an impairment of the obligations of complainant's contract with the State, and come within the inhibition of section 10, article 1, of the constitution of the United States.

Inclining to these views and considering the state of the litigation between the parties (as stated in the argument), we think an injunction pendente lite should issue; to the end that the questions involved may be more fully argued and investigated, and the respective rights of the parties fully protected.

A bond to cover damages, if any result, should be given.

It is therefore ordered that an injunction pending this suit issue, as prayed for, on complainants giving bond in the sum of ..... dollars, conditioned according to law.

43 *Order allowing Injunction.*

Extract from Minutes of December 29th, 1881.

CRES. CITY SL'T'R-HOUSE & LIVE-STOCK L'D'G CO.
vs.
BUTCHERS' UNION SLAUGHTER-HOUSE AND LIVE-STOCK LANDING CO. } No. 9691.

This cause, on the complainant's application for injunction pendente lite, having been on a former day heard and submitted to the court, his honor Don A. Pardee, circuit judge, and his honor Edward C. Billings, district judge, both presiding, and the court having considered the same and being now sufficiently advised of and concerning the same—

It is ordered, that an injunction pendente lite issue herein enjoining and inhibiting the defendants in manner and form and to the extent prayed for in said complainants' bill of complaint, upon the said complainants giving bond in the sum of ....., with good and solvent surety conditioned according to law.

44 *Order referring cause to Master as to the amount of bond.*

Extract from the Minutes of December 31st, 1881.

THE CRESCENT CITY LIVE-STOCK LANDING AND SLAUGHTER-HOUSE CO.
vs.
THE BUTCHERS' UNION SLAUGHTER-HOUSE & LIVE-STOCK LANDING CO. } No. 9691.

Ordered, that this cause be referred to J. W. Gurley, esq., master, to ascertain and report to the court the amount of bond which complainants should give to cover such damages as the defendant may suffer in consequence of the injunction pendente lite issued herein.

Appearance.

Entry in Chancery Order Book January 2d, 1882.

CRESCENT CITY LIVE-STOCK L'D'G & SLAUGHTER-HOUSE CO.
vs.
BUTCHERS' UNION SLAUGHTER-HOUSE & LIVE-STOCK LANDING CO. } No. 9691.

45 The defendants herein, by B. R. Forman, its solicitor, has this day entered its appearance to the complainant's bill of complaint.

Demurrer, Pleas, and Answer.—Filed February 2d, 1882.

Circuit Court of the United States, fifth circuit, eastern district of Louisiana.

THE CRESCENT CITY LIVE-STOCK LANDING AND SLAUGHTER-HOUSE COMPANY
vs.
THE BUTCHERS' UNION SLAUGHTER-HOUSE AND LIVE-STOCK LANDING COMPANY. } No. 9691.

Demurrer, Plea, and Answer.

The demurrer of the Butchers' Union Slaughter-house and Live-stock Landing Company, through Aman Troescher, its president, by protestation, not confessing all or any of the matters and things in the plaintiff's bill of complaint contained to be true in such manner

and form as the same is therein set forth and alleged, doth demur to said bill, and for cause of demurrer sheweth that the plaintiff hath not in the said bill stated such a case as entitles him in a
46 court of equity to any relief against this defendant as to the matters contained in said bill. That the act 118, 1869, of the legislature of Louisiana, is a public statute of the State of Louisiana, and a police regulation of the State in so far as it prohibits the erection of slaughter-houses, &c., in the parishes of Orleans, Jefferson, and St. Bernard, and in so far as it granted to the complainant only the right to erect slaughter-houses, &c., within the limits designated in said statute, and said statute is in no manner a contract; and articles 248 & 258 of the constitution of Louisiana and the ordinances of the city of New Orleans, passed under act 248 and pursuant to its authority, designating the places in the city of New Orleans where slaughter-houses may be erected, and regulating the same, are in no way or manner repugnant to the constitution of the United States.

Wherefore, and for divers other good causes of demurrer
47 appearing in the said bill, the defendant doth demur thereto, and humbly demands the judgment of this court whether he shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with his costs and charges in this behalf wrongfully sustained.

Plea.

1st. The said defendant, not waiving its demurrer, but relying thereon as for so much of the said bill as sets up that the complainant still has the right, power and corporate existence granted by act No. 118 of 1869, doth plead thereto and say: "That by section 3d of said act the plaintiff was required (as a condition precedent to its corporate powers & existence), before the 1st of June, 1869, build and complete a grand slaughter-house of sufficient capacity to accommodate all butchers, and in which to slaughter five hundred animals per day, &c., under penalty of forfeiture of its charter; "that having chosen, &c., as its location the right bank of the Mississippi River for the said grand slaughter-house capable of slaughtering 500 animals
48 per day, and there erected its grand slaughter-house, it had no legal right to tear said slaughter-house and remove to the left bank of the Mississippi River; that said plaintiff did tear down, and abandon, and remove the materials of its "grand slaughter-house" provided under said section 3d, and thereby forfeited its charter, as has been decided in Berthien *v.* the said plaintiff in this suit, 28 A., 210, the Crescent City Live-Stock Landing and Slaughter-house Company and the said plaintiff, having forfeited its charter, cannot ask the protection of the court for its pretended monopoly.

2d. And for further plea this defendant says, that whereas both complainants and defendants are citizens of Louisiana, where this suit is brought, this court has no jurisdiction to grant any relief in favor of the plaintiff against this defendant.

3d. And for further plea this defendant says, that the same
49 matters and things are pending in the Civil District Court for the parish of Orleans, Louisiana, in the suit of the present plaintiff against the same defendant, the suit having been instituted by the complainant herein.

4th. And for further plea this defendant says, that under article 258 of the constitution of Louisiana all monopolies are abolished and prohibited, and article 248 of said constitution provides that the police juries of the several parishes and the constituted authorities of all incorporated municipalities of the State shall alone have the power of regulating the slaughtering of cattle and other live stock within their respective limits, provided no monopoly or exclusive privilege shall exist in the State, nor such business be restricted to the land or houses of any individual or corporation, provided the ordinances designating the places for slaughtering shall obtain the concurrent approval of the board of health or other sanitary organization."

50 That pursuant to and under the authority conferred by this article, the city council of New Orleans did pass an ordinance regulating slaughter-houses, abattoirs, &c., in the limits of the city of New Orleans, and designating the limits or places where slaughter-houses might be erected and carried on in the city of New Orleans, designating Reynes street, Good Children street, the Mississippi River, and the lower line of the parish of Orleans as the place or limits within which slaughter-houses might be built, and said ordinance (as so amended) received the concurrent approval of the board of health, and thereafter this defendant, upon complying with said ordinances, has the legal right to erect and carry on slaughter-houses and live-stock landings within said limits.

All of which matters and things defendant pleads in bar to so much of the said bill as is hereinbefore pleaded to, and defendant prays the judgment of the court thereon.

51 *Answer.*

And the said defendant, not waiving its said demurrer and pleas, but replying and insisting thereon, for answer to so much of said bill as it is advised it is material or necessary for me to make answer unto, say—

1. Defendant denies plaintiff was granted any exclusive right or privilege of having and maintaining slaughter-houses, yards, sheds, and landings, for landing, yarding, sheltering, and slaughtering of all animals intended for human food within the parishes of Orleans, Jefferson, and St. Bernard.

2. Defendant denies that act 118 of 1869 embodies a contract between the State of Louisiana and plaintiff.

3. Defendant denies any confederacy or combination with the members of the city council *or the members of the city council* or the members of the board of health.

4. Defendant admits the passage of an ordinance by the city coun-

cil of New Orleans pursuant to art. 248 of the constitution,
52 designating Reynes street, Good Children street, the Mississippi River, and the lower line of New Orleans as the limits within which slaughter-houses, abattoirs, might be erected and maintained, which ordinance has received the concurrent approval of the board of health.

Defendant admits that unless restrained by injunction from this honorable court that it would and intended to erect and maintain a slaughter-house within the limits prescribed by said ordinance, and to comply otherwise with said city ordinance and all necessary and proper police regulations, and intended to carry on a business similar to pl'ff, and in free competition with plaintiff, and by charging lower prices and affording greater accommodation to butchers and dealers, intended to cheapen the price of meat to all consumers.

Defendants deny that act 118, 1869, contains or embodies a contract, or that any obligation of any contract with plaintiff
53 has been impaired by the State, or has been or was about to be interfered with by defendant, but that defendant, a corporation composed of citizens of the United States, were about to and intended to pursue the lawful and necessary avocation of butchering animals intended for food in the city of New Orleans, in the limits and under and pursuant to the regulations of the constituted municipal authorities of the city of New Orleans.

All of which matters and things defendant avers to be true, and prays to be hence dismissed, with *with* the costs and charges by it wrongfully sustained.

(Signed) B. R. FORMAN,
Counsellor and Solicitor for Defendant.

Aman Troescher, being sworn, says he is president of the Butchers' Union Slaughter-house and Live-stock Landing Company, and the foregoing demurrer and pleas are not filed and interposed for delay, and that the allegations of the foregoing pleas and answer are true in point of fact.

54 (Signed) AMAN TROESCHER.

Sworn to and subscribed before me this 2d day of February, 1882.

[SEAL.] (Signed) N. B. TRIST,
Not. Pub.

I certify that in my opinion the foregoing demurrer and pleas are well founded in point of law.

(Signed) B. R. FORMAN,
Counsel.

Entry in Chancery Order-Book, February 2d, 1882.

CRESCENT CITY LIVE-STOCK LANDING & SLAUGHTER-HOUSE COMPANY
vs.
BUTCHERS' UNION SLAUGHTER-HOUSE & LIVE-STOCK LANDING CO.
No. 9691.

The Butchers' Union Slaughter-house and Live-stock Landing Company, defendant herein, through Aman Troescher, its president, by B. R. Forman, its solicitor, has this day filed its demurrer, plea, and answer to the complainant's bill of complaint.

55 *Master's Report on reference to fix amount of Injunction Bond.*—Filed February 4th, 1882.

To the hon. the Circuit Court of the United States for the 5th circuit and eastern district of Louisiana.

THE CRESCENT CITY LIVE-STOCK LDG. AND SLAUGHTER-HOUSE COMPANY
vs.
THE BUTCHERS' UNION SLAUGHTER-HOUSE & LIVE-STOCK LANDING COMPANY.
No. 9691.

At the suit of the complainants in this case the court ordered that the defendants be restrained "pendente lite" from further proceedings in constructing, erecting, or maintaining within the parishes of Orleans, Jefferson, and St. Bernard any stock landing or slaughter-house, and referred the matter to the undersigned master to examine and report the sum in which an injunction bond should be required for the protection of the defendants from damages therefrom.

The counsel have produced a large number of witnesses.
56 The testimony taken is voluminous.

In the opinion of the master the following material facts are established:

The capital stock of the plaintiffs or old company is $500,009, of which $200,000 has been paid.

1. That of the new company is $250,000, of which $5,710 has been paid.

2. The grounds and improvements of the old company have cost about $250,000; those of the new company about 8,500.

3. The old company has capacity to slaughter 500 head of cattle per day. The new company, if their present building was completed, would have capacity to slaughter 50 head per day.

4. The average net profits per annum of the old company is from $60,000 to $65,000; that of the new, if in operation with its present building completed, is merely conjectural.

5. The old company receives one dollar per head for cattle slaughtered. The new will receive but fifty cents.

57 6. The old company is a monopoly, and has the custom of all. The new would be open to competition and have only a share of the custom.

7. The ground belonging to the new company cost it $6,000.

The frame of the new company's building has been erected, but it is not roofed or enclosed from the weather. The contract price for the building completed is $2,450.

The litigation in this case will probably last three years. The buiding will by that time, if left in its present exposed condition, be of but little if any value.

Much testimony has been offered for the purpose of establishing by the business history of the old company what was likely to be the success of the new; and many witnesses have given as testimony their surmises and conjectures in regard to it.

The master regards the possible future profits as too remote and contingent to be computed. They would necessarily be
58 preceeded by heavy expenses for machinery, fixtures, and other appliances.

Defendant's claim that counsel fees should be included in the estimate, is rejected under authority of the decision of the Supreme Court of the United States in the case of Oelrich *v.* Spain, 15 Wall., 230.

In the master's opinion a bond for eight thousand dollars ($8,000) will fully protect the defendants. It will more than cover all proper legal claim for loss of the building, ground rent, interest, and taxes for three years.

He therefore recommends that a bond of eight thousand dollars be required.

The master returns with the testimony the stenographer's bill of $54.95. It is made at the usual rate of charge.

He asks an order for its payment. For his own services the master submits that $150 is a fair compensation, and asks to be allowed that sum.

Respectfully submitted.

(Signed) J. W. GURLEY,
Master, &c.

59 *Order Confirming Master's Report.*

Extract from Minutes of February 4th, 1882.

CRESCENT CITY LIVE-STOCK LANDING AND SLAUGHTER-HOUSE COMPANY
vs.
BUTCHERS' UNION SLAUGHTER-HOUSE AND LIVE-STOCK LANDING CO. } No. 9691.

The report of J. W. Gurley, master, as to the amount of bond to be given by the complainant before the injunction be issued in this case, having been made and filed, and the court in consideration

thereof, orders that the said report be confirmed and that the injunction prayed for in the bill be issued on the complainants giving bond with B. Saloy as security in the sum of eight thousand dollars, and according to law, the bond to be taken by the clerk; the fee of one hundred and fifty dollars of the master to be paid by the complainants, as well as the costs of the reference and report, the parties to each pay the costs of the stenographer for testimony taken by each, and the whole to be charged as costs to abide the final decree.

60 *Injunction.*—Issued February 6th, 1882.

United States of America. Circuit Court of the United States, fifth circuit and eastern district of Louisiana.

THE CRESCENT CITY LIVE-STOCK LANDING AND SLAUGHTER-HOUSE COMPANY
vs.
THE BUTCHERS' UNION SLAUGHTER-HOUSE COMPANY AND LIVE STOCK LANDING CO. } No. 9691.

The President of the United States to the Butchers' Union Slaughter-house and Live-stock Landing Co., greeting:

Whereas it has been represented to us in our said Circuit Court on the part of the Crescent City Live-stock Landing and Slaughter-house Company in a bill in equity lately exhibited against you, touching certain matters and things therein set forth—

Now, therefore, in consideration of the premises and of the allegations in said bill contained, you, the said Butchers' Union Slaughter-house and Live-stock Landing Company, your attorneys and
61 each of you, are hereby commanded and strictly enjoined under the penalty of the law that you absolutely refrain and desist from constructing or erecting or maintaining anywhere within the limits of the parishes of Orleans, Jefferson, and St. Bernard any stock landings, yards, pens, sheds, slaughter-houses, abattoirs, or other such structures, or from conducting or carrying on anywhere within said parishes the business of stock landing and slaughtering, except at the slaughter-houses, landings and premises of the Crescent City Live-stock Landing and Slaughter-house Company, and upon the terms and conditions set forth in act No. 118 of the legislature of the State of Louisiana of the year 1869. And you are so enjoined during the pen*alty* of said cause.

Witness the Honorable Morrison R. Waite, chief justice of the Supreme Court of the United States, at the city of New Orleans, 16th day of February, in the year of our Lord 1881.

[SEAL.] (Signed) F. A. WOOLFLEY,
Clerk.

Marshal's Return.

Received Feb'y 6, 1882, by the U. S. marshal, and on Feb'y
62 7th, 1882, I served a true copy of the within injunction on the

Butchers' Union Slaughter-house and Live-stock Landing Company, defendants herein, by handing the same to Aman Troscher, esq., in person, in the city of New Orleans, the president of the aforesaid company.

(Signed) E. S. CURRY,
Dp'y U. S. Marshal.

Replication to Answer.—Filed March 6th, 1882.

THE CRESCENT CITY LIVE-STOCK LANDING AND SLAUGHTER-HOUSE COMPANY
vs.
THE BUTCHERS' UNION SLAUGHTER-HOUSE AND LIVE-STOCK LANDING CO. } No. 9691.

U. S. Circuit Court, eastern district of Louisiana. In equity.

The replication of the Crescent City Live-stock Landing and Slaughter-house Company, complainant, to the answer of the Butchers' Union Slaughter-house and Live-Stock Landing Company, defendant.

This repliant, saving and reserving to itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereto saith, that it will aver and prove
63 its said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied to by this defendant, without this: that any other matter or thing whatsoever in said answer contained material or effectual in law to be replied to, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill it has already prayed.

(Signed) MOTT & KELLY,
Complainant's Solicitors.

Entry in Chancery Order-Book, March 6th, 1882.

CRESCENT CITY LIVE-STOCK LANDING & SLAUGHTER-HOUSE COMPANY
vs.
BUTCHERS' UNION SLAUGHTER-HOUSE & LIVE-STOCK LANDING COMPANY. } 9691.

The complainants, by their solicitors, Mott and Kelly, set down the demurrer herein filed for argument, and also set down the
64 pleas herein filed for argument as to their sufficiency.

Motion and order fixing Demurrer and Pleas.—Entered and filed April 1, 1882.

CRESCENT CITY LIVE-STOCK LANDING & SLAUGHTER-HOUSE COMPANY
vs.
THE BUTCHERS' UNION SLAUGHTER-HOUSE & LIVE-STOCK LANDING COMPANY. } No. 9691.

On motion of Mott & Kelly and Thomas J. Semmes, solicitors of the complainants—

It is ordered, that the demurrer and pleas in this case be assigned for trial on Saturday next, the 8th inst., at 11 o'clock A. M., or at any other hour or day thereafter that the court will hear the same.

Opinion on Demurrer and Pleas.—Filed April 25th, 1882.

United States Circuit Court, fifth judicial circuit, eastern district of Louisiana.

CRESCENT CITY LIVE-STOCK LANDING & SLAUGHTER-HOUSE COMPANY
vs.
BUTCHERS' UNION LIVE-STOCK LANDING & SLAUGHTER-HOUSE COMPANY. } No. 9691.

65 This cause has been set down for hearing, and heard on demurrer and pleas.

The demurrer is a general one going to the whole bill. The questions raised by it have been practically disposed of on the hearing heretofore had for a preliminary injunction.

As we adhere to our opinions given on that hearing, the demurrer must be overruled.

The first plea sets up a forfeiture of complainant's charter and rights by reason of having removed the grand slaughter-house as originally located, on the right bank of the Mississippi River, under the provisions of act No. 118 of 1869, to the left bank of the river.

This plea is insufficient, as under the terms of said act 118 of 1869 such removal would not work a forfeiture of complainant's charter and exclusive rights, even if such forfeiture could be inquired into collaterally.

66 The second plea is to the jurisdiction of the court on the ground that both complainant and defendant are citizens of Louisiana. The federal question involved in this suit, to wit, the constitutionality of certain articles of the constitution of the State of Louisiana, under which the defendant claims and exercises rights which impair the validity of complainant's contract, making a case in equity arising under the constitution and laws of the United States, gives the court jurisdiction.

This is no longer an open question.

The third plea sets forth that there is a suit between the same parties on the same causes of action depending in the State court.

This plea is insufficient in form and substance in not showing when the suit in the State court was commenced, whether prior or subsequent to this suit, whether issue was joined, &c.; (see Story Eq. Pl., § 737,) and it is insufficient in law, (93 U. S., 554; 96th U. S., 588.)

The fourth plea avers certain articles of the Louisiana constitution of 1879, abolishing monopolies and giving the regulation of
67 slaughter-houses to the municipal corporations, which latter have enlarged the limits within which slaughtering of animals for food may be done.

The effect of the article of the Louisiana constitution abolishing monopolies, as affecting complainant's rights, has been passed upon in this case.

We still adhere to the opinion that complainant's exclusive right, contracted under act No. 118 of 1869, is not affected by the constitution of 1879.

This plea also must be held insufficient.

We notice that the demurrer to the whole bill and from separate pleas, each going to the whole bill, there is also filed an answer to the whole bill, in which all the matters averred in the pleas are again set forth.

Under the 32d equity rule a defendant may demur to part of a bill, plead to part, and answer as to the residue.

Under the 37th equity rule, no demurrer or plea shall be
68 held bad and overruled upon argument only because the answer of the defendant may extend to some part of the same matter as may be covered by such demurrer or plea.

But we do not understand that there is any rule that allows a defendant to demur to the whole bill, plead to the whole bill, and answer the whole bill at the same time.

The effect of such pleading is that the plea is taken as waiving the demurrer, and the answer as waiving the plea. (See Daniels' Chancery, 787–788.)

In this view of the case, as well as for reasons before given, the demurrer and pleas filed herein should be overruled, and it is so ordered.

Order, Demurrer, and Pleas Overruled.

Extract from the Minutes of April 25th, 1882.

CRESCENT CITY LIVE-STOCK LANDING AND SLAUGHTER-HOUSE COMPANY
vs.
BUTCHERS' UNION SLAUGHTER-HOUSE AND STOCK LANDING COMPANY. } No. 9691.

69 This cause came on to be heard on the demurrer and pleas of

the defendants to the bill of complaint herein and was argued by counsel.

On consideration whereof, it is ordered that the demurrer and pleas herein be overruled.

Withdrawal of Answer and submission of case on Demurrer and Pleas.—Entered and filed May 8th, 1882.

United States Circuit Court, fifth circuit, eastern district of Louisiana.

CRESCENT CITY LIVE-STOCK LANDING AND SLAUGHTER-HOUSE COMPANY
vs.
BUTCHERS' UNION SLAUGHTER-HOUSE AND LIVE-STOCK LANDING COMPANY.
No. 9691.

Now come the defendants, and with leave of the court first had and obtained, and withdraw their answer and rest their case upon the demurrer and pleas heretofore filed.

(Signed) B. R. FORMAN,
70 *Solicitor for Defendant.*

Decree overruling Demurrer and Pleas and perpetuating Injunction.—Entered and filed May 8th, 1882.

United States Circuit Court for the eastern district of Louisiana.

THE CRESCENT CITY LIVE-STOCK LANDING AND SLAUGHTER-HOUSE COMPANY
vs.
THE BUTCHERS' UNION SLAUGHTER-HOUSE AND LIVE-STOCK LANDING COMPANY.
No. 9691.

This case came on regularly to be heard on the demurrer and pleas to the bill of complaint of the complainant. Whereupon, after argument of counsel, and due consideration by the court after submission thereto, the said demurrer and the said pleas were overruled and dismissed, and thereafter, on the 8th day of May, 1882, the defendant withdrew the answer theretofore filed. Whereupon, and in consideration whereof and of the averments and allegations of the bill of complaint being sufficient, therefore it is ordered, adjudged, and decreed that the preliminary injunction issued in this case be maintained and perpetuated, and that the defendant, the
71 Butchers' Union Slaughter-house Company, and its officers, agents, attorneys, and servants, and they are hereby peremptorily and perpetually enjoined from erecting and maintaining any slaughter-house, landing, sheds, pens, or other structures or enclosures for the slaughtering, landing, yarding or sheltering any animals intended for human food in the parishes of Orleans, Jefferson and St. Bernard, above the United States barracks, on the left or east bank of the Mississippi River, and above the depot of Morgan's Louisi-

ana and Texas Railroad Company, formerly known as the New Orleans, Opelousas and Great Western Railroad, on the west or right bank of the Mississippi River, and at any place or places other than the slaughter-houses, yards, pens, and landings of the complainant herein, and that the said defendant shall pay all the costs of this suit.

New Orleans, 8th May, 1882.

(Signed) DON A. PARDEE,
Circuit Judge.

72 *Motion and Order and Affidavit for Appeal.*—Entered and filed May 11th, 1882.

U. S. Circuit Court, fifth circuit, eastern district of Louisiana.

THE CRESCENT CITY SLAUGHTER-HOUSE AND LIVE-STOCK LANDING COMPANY
vs.
THE BUTCHERS' UNION SLAUGHTER-HOUSE AND LIVE-STOCK LANDING COMPANY. } No. 9691.

On motion of B. R. Forman, attorney and solicitor for the defendants, and on shewing to the court that the matter in dispute in this cause exceeds the sum or value of five thousand dollars, and this cause is reviewable on appeal under the 4th paragraph of section 699, Revised Statutes of the United States, without regard to the amount or value of the matter in dispute—

It is ordered by the court that the defendants, The Butchers'
73 Union Slaughter-house and Live-stock Landing Company, be allowed an appeal from the final decree herein rendered and signed 8th May, 1882, returnable to the Supreme Court of the United States on the second Monday of October, 1882, and that the amount of the bond for a supersedeas be fixed at the sum of two hundred and fifty dollars.

New Orleans, 11th May, 1882.

(Signed) DON A. PARDEE, *Judge.*

Affidavit.

CRESENT CITY SLAUGHTER-HOUSE AND LIVE-STOCK LANDING COMPANY
vs.
BUTCHERS' UNION SLAUGHTER-HOUSE AND LIVE-STOCK LANDING COMPANY. } No. 9691.

Aman Troescher, president of the Butchers' Union Slaughter-house and Live-stock Landing Company, the defendant in this cause, being sworn, says the value of the matter in dispute in this cause exceeds the sum or value of five thousand dollars, exclusive of costs.

That the value of the stock of the defendant's company
74 which is destroyed by the decree exceeds ten thousand dollars.

That the value of the property purchased and owned by

defendants for the purpose of carrying on the slaughter-house business which is rendered useless by the decree exceeds seven thousand dollars. That the value of the franchises and right to carry on the slaughter-house business in the parish of Orleans which is denied and enjoined by the decree exceeds ten thousand dollars.

(Signed) AMAN TROESCHER.

Sworn to and subscribed before me this 12th day of May, 1882.

(Signed) J. A. CHARBONNET,
Comm'er U. S. Circuit Court, Eastern Dist. of La.

Bond for Appeal.—Filed May 12th, 1882.

UNITED STATES OF AMERICA.

Know all men by these presents, that we, The Butchers' Union Slaughter-house and Live-stock Landing Company, by Aman
75 Troescher, president, and Emile Tujaque and Aman Troescher in solido, are held and firmly bound jointly and severally unto The Crescent City Live-stock Landing and Slaughter-house Company in the sum of two hundred and fifty dollars, lawful money of the United States of America, to be paid to the said Crescent City Live-stock Landing and Slaughter-house Company, heirs, executors, administrators, and assigns, for which payment well and truly to be made we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the 12th day of May, in the year of our Lord eighteen hundred and eighty-two (1882.)

Whereas the said Butchers' Union Slaughter-house and Live-stock Landing Co. heretofore, to wit, on the 11th day of May, 1882, taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered on the 8th day of May, 1882, by the Circuit Court of the United States for the fifth circuit, hold-
76 ing sessions in and for the eastern district of Louisiana, in the suit of The Crescent City Live-stock Landing and Slaughter-house Company *vs.* The Butchers' Union Slaughter-house and Live-stock Landing Company, No. 9691 of the docket thereof—

Now, the condition of the above obligation is, that if the above bounden Butchers' Union Slaughter-house and Live-stock Landing Company shall prosecute its said appeal to effect, and shall answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void, otherwise to remain in full force and virtue.

(Signed) THE BUTCHERS' UNION SLAUGHTER-HOUSE AND LIVE-STOCK LANDING COMPANY,
By AMAN TROESCHER. [L. S.]
(Signed) EMILE TUJAQUE. [L. S.]
(do.) AMAN TROESCHER. [L. S.]

UNITED STATES OF AMERICA,
District of Louisiana, } *ss.*

Personally appeared Emile Tujaque and Aman Troeschler,
77 who, being severally duly sworn, deposes and says that he is the surety on the within bond; that he resides in New Orleans, and is worth the full sum of two hundred and fifty dollars over and above all of his debts and liabilities and property exempt from execution.

(Signed) EMILE TUJAQUE.
(do.) AMAN TROESCHER.

Sworn to and subscribed before me this 12th day of May, 1882.

(Signed) J. A. CHARBONNET,
Comm'er U. S. Circuit Court, East. Dist. of La.

Bond approved May 12th, 1882.

(Signed) EDWARD C. BILLINGS, *Judge.*

78 UNITED STATES OF AMERICA.

Circuit Court of the United States, fifth circuit and eastern district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the Circuit Court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 77 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of The Crescent City Live-stock Landing and Slaughter-house Company *versus* The Butchers' Union Slaughter-house and Live-stock Landing Company, No. 9691 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 21st day of August, A. D. 1882.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Don A. Pardee, United States judge for the eastern district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the Circuit Court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 21st day of August, A. D. 1882.

DON A. PARDEE, *Judge.*

79 THE UNITED STATES OF AMERICA.

Circuit Court of the United States, eastern district of Louisiana.

The President of the United States to The Crescent City Live-stock Landing and Slaughter-house Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a motion and order for an appeal filed in the clerk's office of the Circuit Court of the United States for the fifth circuit and district of Louisiana, wherein the Crescent City Live-stock Landing and Slaughter-house Company is complainant and appellee and the Butchers' Union Slaughter-house and Live-stock Landing Company is defendant and appellant, to show cause, if any there be, why the decree rendered against the said Butchers' Union Slaughter-house and Live-stock Landing Company, as in said motion and order for an appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 12th day of May, in the year of our Lord one thousand eight hundred and eighty-two.

DON A. PARDEE, *Judge.*

80 [Endorsement:] United States Circuit Court; No. 9691; Crescent City Live-stock Landing & Slaughter-house Co. *vs.* Butchers' Union Slaughter-house and Live-stock Landing Co.; citation.

Marshal's Return.

Received May 27, 1882, by the U. S. marshal, and on May 31st, 1882, I served a true copy of the within citation of appeal on the appellees herein named, to wit, The Crescent City Live-stock Landing & Slaughter-house Company, by handing the same to Robert G. Mott, esq., the attorney of record for the aforesaid appellees, in person, in the city of New Orleans.

E. S. CURRY,
D'y U. S. Marshal for Eastern District of La.

Personally appeared before me E. S. Curry, a lawful deputy of J. R. G. Pitkin, U. S. marshal for the eastern district of Louisiana, and makes oath that he served a true copy of the within citation of appeal on the appellees herein named, as set forth in his official return herein.

E. S. CURRY,
D'y U. S. Marshal for Eastern D's't of La.

Subscribed and sworn before me June 13th, 1882.

T. V. COUPLAND,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

[Endorsement on cover:] E. Louisiana, C. C. U. S.; No. 627; The Butchers' Union Slaughter-house and Live-stock Landing Company, appellants, *vs.* The Crescent City Live-stock Landing and Slaughter-house Company; filed 2nd October, 1882.

CHARTER

OF THE

SLAUGHTERHOUSE

COMPANY.

NEW ORLEANS:
PICAYUNE & GAZETTE PRINT, 26 CARONDELET ST.
1870.

CHARTER

—OF THE—

SLAUGHTERHOUSE

COMPANY.

NEW ORLEANS:
PEYCHAUD & GARCIA, PRINT, 48 CAMP STREET.
1879.

CHARTER

—OF THE—

Slaughterhouse Company.

An Act to Protect the Health of the City of New Orleans, to locate the Stock Landings and Slaughterhouses, and to Incorporate the "Crescent City Live Stock Landing and Slaughterhouse Company."

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened,* That from and after the first day of June, A. D. (1869) eighteen hundred and sixty-nine, *it shall not be lawful to land, keep or slaughter any cattle, beeves, calves, sheep, swine or any other animal, or to have, keep or establish any stock landing, yards, pens, slaughterhouses or abattoirs at any point or place* within the City of New Orleans, or the parishes of Orleans, Jefferson and St. Bernard, or *at any point or place on the east bank of the Mississippi river* within the corporate limits of the City of New Orleans, *or at any point on the west bank of the Mississippi river above the present depot of the New Orleans,* Opelousas and Great Western Railroad Company, except that the "Crescent City Stock Landing and Slaughterhouse Company" may establish themselves at any point or place as hereinafter provided. Any person or persons, or corporation or company carrying on any business or doing any act in contravention of this act, or landing, slaughtering, or keeping any animal or animals in violation of this act, shall be liable to a fine of two hundred and fifty dollars ($250) for each and every violation, the same to be recoverable with costs of suit before any court of competent jurisdiction.

SEC. 2. *Be it further enacted, etc.*, That William D. Sanger, Joseph H. Pearson, J. R. Irwin, John Wharton, Franklin J. Pratt, R. T. Packwood, N. W. Travis, Henry V. Barringer, L. P. Sanger, W. S. Mudgett, Oliver D. Russell, J. Viosca, S. P. Griffin, L. H. Crippin, William McKenna, A. J. Oliver, F. G. Clark, and their successors, be and are hereby created a body politic and corporate to be known and designated as the "Crescent City Live Stock Landing and Slaughterhouse Company," and by that name and style shall sue and be sued, purchase, hold, sell, contract, lease, and release, grant and transfer, and may do all things necessary for the purposes hereinafter mentioned, and perform all other acts, and exercise and enjoy all other rights and privileges incident to corporations; adopt and use a common seal, make, publish, and alter at pleasure by-laws, rules and regulations, for the government of the company or corporation, and the carrying on of its business; shall determine and appoint their officers, and fix their compensaton and term of office, and shall fix the amount of the capital stock of the said company or corporation and the number of shares thereof.

The domicile of the company or corporation shall be in the City of New Orleans, and the President shall be the proper officer on whom to serve citations, notices and other legal process wherein this company or corporation may be interested.

SEC. 3. *Be it further enacted, etc.*, That the said company or corporation is hereby authorized to establish and erect at its own expense, at any point or place on the east bank of the Mississippi river, within the parish of St. Bernard, or in the corporate limits of the City of New Orleans, below the United States Barracks, or at any point or place on the west bank of the Mississippi river below the present depot of the New Orleans, Opelousas and Great Western Railroad Company, wharves, stables, sheds, yards and buildings necessary to land, stable, shelter, protect and preserve all kinds of horses, mules, cattle and other animals, from and after the time such buildings, yards, etc.,

are ready and complete for business, and notice thereof is given in the official journal of the State; and the said Crescent City Live Stock Landing and Slaughterhouse Company shall have the sole and exclusive privilege of conducting and carrying on the live stock landing and slaughterhouse business within the limits and privileges granted by the provisions of this act, and cattle and other animals destined for sale or slaughter in the city of New Orleans, or its environs, shall be landed at the live stock landing and yards of said company, and shall be yarded, sheltered and protected, if necessary, by said company or corporation; and said company or corporation shall be entitled to have and receive for each steamship landing at the wharves of the said company or corporation, ten ($10) dollars; for each steamboat or other water craft, five ($5) dollars; and for each horse, mule, bull, ox or cow landed at their wharves, for each and every day kept, ten (10c.) cents; for each and every hog, calf, sheep or goat, for each and every day kept, five (5c·) cents, all without including feed; and the said company or corporation shall be entitled to keep and detain each and all of said animals until said charges are fully paid. But if the charges of landing, keeping and feeding any of the aforesaid animals shall not be paid by the owners thereof after fifteen days of their being landed and placed in the custody of the said company or corporation, then the said company or corporation, in order to reimburse themselves for charges and expenses incurred, shall have power, by resorting to judicial proceedings, to advertise said animals for sale by auction, in any two newspapers published in the city of New Orleans for five days; and after the expiration of said five days, the said company or corporation may proceed to sell by auction, as advertised, the said animals, and the proceeds of such sales shall be taken by the said company or corporation and applied to the payment of the charges and expenses aforesaid, and other additional costs; and the balance, if any, remaining from such sales, shall be held to the credit of and paid to the

order or receipt of the owner of said animals. Any person or persons, firm or corporation violating any of the provisions of this act, or interfering with the privileges herein granted, or landing, yarding or keeping any animals in violation of the provisions of this act, or to the injury of said company or corporation, shall be liable to a fine or penalty of two hundred and fifty ($25) dollars, to be recovered with costs of suit before any court of competent jurisdiction.

The company shall, before the first of June (1869), eighteen hundred and sixty-nine, build and complete a grand slaughter-house of sufficient capacity to accommodate all butchers, and in which to slaughter five hundred animals per day; also that a sufficient number of sheds and stables shall be erected before the date aforementioned, to accommodate all the stock received at this port, all of which to be accomplished before the date fixed for the removal of the stock landing, as provided in the first section of this act, under penalty of a forfeiture of their charter.

SEC. 4. *Be it further enacted, etc., That the said company or corporation is hereby authorized to erect, at its own expense, one or more landing places for live stock, as aforesaid,* at any points or places consistent with the provisions of this act, and to have and enjoy from the completion thereof, and after the first day of June, A. D. (1869), eighteen hundred and sixty-nine, the exclusive privilege of having landed at at their wharves or landing places all animals intended for sale or slaughter in the parishes of Orleans and Jefferson; and are hereby also authorized (in connection) *to erect at its own expense one or more slaughterhouses, at any points or places consistent with the provisions of this act, and to have and enjoy from the completion thereof, and after the first day of* June, A. D. (1869), eighteen hundred and sixty-nine, the exclusive privilege of having slaughtered therein all animals, the meat of which is destined for sale in the parishes of Orleans and Jefferson.

SEC. 5. *Be it further enacted, etc.*, That whenever said *slaughter-houses and accessory buildings shall be completed and thrown open* for the use of the public, said, company or corporation shall immediately give public notice for thirty days, in the official journal of the State, and within said thirty days notice, and within, from and after the first day of June, A. D. (1869), eighteen hundred and sixty-nine, all other stock laddings and slaughterhouses within the parishes of Orleans, Jefferson and St. Bernard shall be closed, and it will no longer be lawful to slaughter cattle, hogs, calves, sheep or goats, the meat of which is determined for sale within the parishes aforesaid under a penalty of one hundred ($100) dollars for each and every offense, recoverable, with costs of suit, before any court of competent jurisdiction. That all animals to be slaughtered, the meat whereof is determined for sale in the parishes of Orleans or Jefferson, must be slaughtered *in the slaughterhouse* erected by the said company or corporation, and upon a refusal of said company or corporation to allow any animal or animals to be slaughtered after the same has been certified by the inspector as hereinafter provided, to be fit for human food, the said company or corporation shall be subject to a fine in each case of two hundred and fifty dollars, recoverable, with costs of suit, before any court of competent jurisdiction; said fines and penalties to be paid over to the Auditor of Public Accounts, which sum or sums shall be credited to the educational fund.

SEC. 6. *Be it further enacted, etc.*, That the Governor of the State of Louisiana shall appoint a competent person, clothed with police powers, to act as inspector of all stock that is to be slaughtered, and whose duty it will be to examine closely all animals intended to be slaughtered, to ascertain whether they are sound and fit for human food or not; and if sound and fit for human food to furnish a certificate stating that fact to the owners of the animals inspected; and without said certificate no animals can be slaughtered for sale in the slaughterhouses of

said company or corporation. The owner of said animals so inspected to pay the inspector ten (10c.) cents for each and every animal so inspected, one-half of which fee the said inspector shall retain for his services, and the other half of said fee shall be paid over to the Auditor of Public Accounts, said payment to be made quarterly. Said inspector shall give a good and sufficient bond to the State in the sum of five thousand dollars, with sureties subject to the approval of the Governor of the State of Louisiana, for the faithful performance of his duties. Said inspector shall be fined for dereliction of duty fifty ($50) dollars for each neglect. That said inspector may appoint as many deputies as may be necessary. The half of the fees collected as provided above, and paid over to the Auditor of Public Accounts, shall be placed to the credit of the educational fund.

SEC. 7. *Be it further enacted, etc.*, That all persons slaughtering or causing to be slaughtered cattle or other animals in said slaughterhouses shall pay to the said company or corporation the following rates or perquisites, viz.: For all beeves, one ($1) dollar each; for all hogs and calves, fifty (50c.) cents each; for all sheep, goats and lambs, thirty (30c.) cents each; and the said company or corporation shall be entitled to the head, feet, gore and entrails of all animals, excepting hogs, entering the slaughterhouses and killed therein, it being understood that the heart and liver are are not considered as a part of the gore and entrails, and that the said heart and liver of all animals slaughtered in the slaughterhouses of the said company or corporation shall belong, in all cases, to the owners of the animals slaughtered.

SEC. 8. *Be it further enacted, etc.*, That all the fines and penalties incurred for violations of this act shall be recoverable in a civil suit before any court of competent jurisdiction, said suit to be brought and prosecuted by said company or corporation in all cases where the privileges granted to the said company or corporation by the provisions of this act are violated or interfered with; that one-half of all the fines and penalties recovered

by the said company or corporation in consideration of their prosecuting the violation of this act, and the other half shall be paid over to the Auditor of Public Accounts, to the credit of the educational fund.

SEC. 9. *Be it further enacted, etc.*, That said Crescent City Live Stock Landing and Slaughterhouse Company shall have the right to construct a railroad from their buildings to the limits of the city of New Orleans, and shall have the right to run cars thereon, drawn by horses or other locomotive power, as they may see fit; said railroad to be built on either of the public roads running along the levee on each side of the Mississippi river. The said company or corporation shall also have the right to establish such steam ferries as they may see fit to run on the Mississippi river between their buildings and any points or places on either side of said river.

SEC. 10. *Be it further enacted, etc.*, That at the expiration of twenty-five years from and after the passage of this act the privileges herein granted shall expire.

SEC. 11. *Be it further enacted, etc.*, That all laws, or parts of laws, contrary to or inconsistent with the provisions of this act be and the same are hereby repealed.

SEC. 12. *Be it further enacted, etc.*, That this act shall take effect from and after the first day of June, A. D. (1869), eighteen hundred and sixty-nine.

(Signed) CHAS. W. LOWELL,
Speaker of the House of Representatives.

(Signed) OSCAR J. DUNN,,
Lieutenant Governor and President of the Senate.

Approved March 8, 1869.

(Signed) H. C. WARMOTH,
Governor of the State of Louisiana.

A true copy:

GEO. E. BOVEE,
Secretary of State.

UNITED STATES OF AMERICA,
STATE OF LOUISIANA,
City of New Orleans.

BE IT KNOWN, THAT ON THIS *twenty-second day of March, in the year of our Lord one thousand eight hundred and sixty nine,* Before me, John Wilson Shaw, a Notary Public, in and for the parish of Orleans, duly commissioned and qualified and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared S. P. Griffin, F. J. Pratt, Edward S. Wurzbarger, transferee of N. W. Travis, Jonas Pickles, transferee of J. R. Irwin, John Wharton, James G. Clark, E. B. Benton, for self as transferee of William McKenna, also as agent for John Lockwood, transferee of Henry V. Barringer, Oliver D. Russell, R. T. Packwood, J. H. Crippen, and William Durbridge, successor to A. J. Oliver, all of whom are of the full age of majority, who declared and said that they are desirous of forming themselves, their constituents, associates and successors into a corporation and body politic under and by virtue of an act of the Legislature of the State of Louisiana, approved March 8th, 1869, entitle an act to protect the health of the City of New Orleans, to locate the stock landings and slaughterhouses, to incorporate "The Crescent City Live Stock Landing and Slaughterhouse Company," and also under and by virtue of the provisions of the General Statutes of the State of Louisiana relative to the organization of corporations in this State, and particularly of the act approved March 14th, 1855, entitled, an act "for the organization of corporations for works of public improvement and utility," and with the view of carrying their desire into effect and in order to acquire and enjoy the rights, privileges and power of a body corporate and politic in law, they now agree to and subscribe this act of incorporation and bind themselves, their associates, constituents, and successors by the following articles and conditions:

ARTICLE FIRST.

The name and title of this corporation shall be "The Crescent City Live Stock Landing and Slaughterhouse Company," the domicil thereof shall be the city of New Orleans, and its corporate seal shall be left to the discretion of the directors, all legal proceedings shall be served on the President of the body, and said corporation shall have an existence of twenty-five years from the date of the aforesaid act creating it, approved March 8th, 1869.

ARTICLE SECOND.

The object and purposes of said corporation shall be to erect, maintain and control Stock Landings and Slaughterhouses for the cities of New Orleans, Jefferson and Carrollton, under all the privileges and franchises of an act passed by the General Assembly of the State of Louisiana, at its session in the year 1869, entitled an Act "To protect the Health of the City of New Orleans and to locate Stock Landings and Slaughterhouses," and to incorporate the "The Crescent City Live Stock Landing and Slaughterhouse Company," which act we, the corporators, do now formally accept in all its details and provisions.

ARTICLE THIRD.

The Capital Stock of this Corporation is hereby fixed, as by resolution adopted on the 17th of March, 1869, at a full meeting of the corporators at the sum of two million dollars, represented by twenty thousand shares of one hundred dollars each, of which one-half, namely, ten thousand shares are reserved and set apart as fully paid up stock (for the purpose expressed in the said resolution of the 17th of March, 1869). The other half, or ten thousand shares shall be subscribed and paid for at the times and in the manner following, to-wit: The subscribers to the said shares shall pay into the hands of the President, upon the Company's

organization for business, ten dollars on each and every share of stock subscribed by them, and the balance due on each and every share shall be paid in at the office of the said Company in successive installments, not more than ten dollars on each share after thirty days notice shall have been given of each such call by the Board of Directors in one or more newspapers published in the city of New Orleans, and should any stockholder fail or refuse to pay any installment called for at the time such installment falls due, the Board of Directors may declare the stock of such delinquent forfeited after thirty days notice in one of the newspapers published in the city of New Orleans; and in that event all and every amount paid on said stock shall be forfeited to the Company, or the Board of Directors in their discretion may enforce the payment of the stock subscribed from such of the delinquent subscribers as they shall deem advisable, but should the Board of Directors, after two years, deem it unnecessary to make any further demands of the stockholders for such residus, they are hereby authorized and empowered to issue certificates of stock as fully paid up; to all such stockholders who may have previously paid up all calls or demands made prior thereto, and shall be fully empowered at any and all times to reduce by purchase or otherwise any portion of the outstanding Capital Stock.

ARTICLE FOURTH.

All powers of the Corporation shall be vested in a Board consisting of nine Directors, who shall own each at least fifty shares of Capital Stock, and who shall at their first meeting elect one of their own number President of the Board and Corporation. The said Corporation through their President and Directors, as fully set forth in the second section of the Act of Incorporation, shall have and enjoy succession, may contract, sue and be sued, and and plead and be impleaded in their Corporate name, make and use a Corparate seal, hold, receive, purchase and convey real

property for the use of the said Corporation only, and personal property, and they may invest any surplus funds in paper, secured by mortgage on property in the City of New Orleans, of at least double the value of the amount loaned, provided that such loans shall be made only on a vote of at least three-fourths of the Directors, said Board of Directors shall appoint a Secretary and all such Clerks and Agents as may be necessary, may remove the same at pleasure, fix the salaries of all officers of the Corporation and the amount of security that shall be required from any of said officers and agents, and shall make and establish such by-laws for the proper management and regulation of the affairs of said Corporation as may be necessary and proper, and five of the said Board shall be necessary to form a quorum thereof, and shall have power to fill any vacancies that may occur therein by death or resignation, or any other disqualifying cause.

ARTICLE FIFTH.

On the first Wednesday in March, A. D. eighteen hundred and seventy, and annually thereafter an election for said Board of nine Directors shall be held at the office of the Corporation, of which election previous notice of fifteen days shall be given in two newspapers published in New Orleans; a plurality of votes counting one for each share voted upon shall be sufficient to elect such Directors, provided that no corporation shall vote more than fifty shares, nor to vote in any share transferred to him or them within thirty days prior to such election, each share holder at all meetings for the election of Directors or other purposes, shall be entitled directly or by proxy to one vote on each share of stock held by him.

The failure to elect Directors as aforesaid shall not dissolve the said Corporation, but the Directors then in office shall hold over until another election is held, of which notice shall be given as above provided for, and shall continue until an election be held.

ARTICLE SIXTH.

All transfer of stock shall be recorded in the office of said Company in a book of transfer to be kept for that purpose. The new stockholdor binds himself, or herself, by the mere fact of recording such transfer, to abide by all the terms, conditions and stipulations of this act, and any and all the rules, regulations or by-laws made and adopted in pursuance thereof.

ARTICLE SEVENTH.

Dividends shall be declared quarterly, provided the profits of the Company warrant the Board of Directors in declaring the same.

ARTICLE EIGHTH.

The following eamed Incorporators to-wit, E. J. Pratt, Joseph Ellison, R. F. Packwood, J. Pickles, Wm. Durbridge, E. B. Benton, S. P. Griffin, J. G. Clark and J. Wharton are hereby constituted the first Board of Directors, who shall at their first meeting elect one of their number as President, and the said Board shall serve until superseded by their successors, to be elected as provided in article fifth.

ARTICLE NINTH.

This Act of Incorporation may be modified, altered or amended and the Company dissolved at a general meeting of the stockholders, convened for such purpose or purposes, after not less than thirty days previous notice in the English and French language, published in the newspaper having the largest daily circulation in New Orlerns and with the assent of the stockholders holding three-fourths of the Capital Stock represented at such meeting, and all such modifications, alterations or amendments of the dissolution of the Company shall be duly recorded and published according to law.

ARTICLE TENTH.

The liquidation of the affairs of said Corporation at the termination of its Charter, or if sooner determined upon by its stockholders, shall be conducted by three stockholders, duly elected by a three-fourths in amount of the stockholders at a meeting convened for that purpose, after sixty days previous notice in two newspapers published in New Orleans; the period of liquidation and the amount of their compensation, as also all other privileges to be conferred upon said liquidators shall be fixed in such manner as the said stockholders may at such general meeting determine.

United States Internal Revenue Siamps to the amount of one dollar are fixed hereto and duly cancelled at the execution hereof.

Thus done and passed in my office at the city of New Orleans aforesaid in the presence of Alfred Shaw and Frederick Hecker, competent witnesses, who hereunto sign their names, with the said parties and appearers, and me, the said notary, on the day, month and year first herein written.

Original stamped one dollar U. S. Internal Bevenue.

(Original signed) S. P. GRIFFIN.
F. J. PRATT,
EDW. S. WURZBURGER,
JONAS PICKLES,
JOHN WHARTON,
JAMES G. CLARK,
E. B. BENTON for self,
As transferee of WM. McKENNA,
B. B. BENTON, Agent,
For John Lockwood, transferee of HENRY V. BARRINGER,
OLIVER D. RUSSELL,
R. T. PACKWOOD,
J. H. CRIPPEN,
WM. DURBRIDGE,
Successor to A. J. OLIVER,
ALFRED SHAW,
FREDERICK HECKER.
J. WILSON SHAW,
Notary Public.

Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 622.

THE BUTCHERS' UNION SLAUGHTER-HOUSE AND LIVE-STOCK LANDING COMPANY, APPELLANT,

vs.

THE CRESCENT CITY LIVE-STOCK LANDING AND SLAUGHTER-HOUSE COMPANY, APPELLEE.

Reply of Defendant and Appellant to Brief of Complainant.

B. R. FORMAN,
Counsel for Defendant and Appellant.

Judd & Detweiler, Printers, Washington.

Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 627.

THE BUTCHERS' UNION SLAUGHTER-HOUSE AND LIVE-STOCK LANDING COMPANY, APPELLANT,

vs.

THE CRESCENT CITY LIVE-STOCK LANDING AND SLAUGHTER-HOUSE COMPANY, APPELLEE.

Reply of Defendant and Appellant to Brief of Complainant.

I regret to see my adversary, instead of meeting squarely and fairly the single issue of law presented in the bill of complaint, and met by the demurrer and by the second and fourth pleas, trying to dodge behind old and obsolete technical rules of pleading, and thus try to avoid a decision on the merits. The defendant cannot thus be precluded a hearing and decision on the question, does the complainant's bill show jurisdiction in the United States Circuit Court and does it entitle them to the final decree for a perpetual injunction. The answer was withdrawn in the court below and the case really decided on the demurrer and plea to the jurisdiction. No consent, no waiver, could give the United States circuit court jurisdiction of a case where it appeared from the bill that plaintiff and defendant were citizens of the same State, unless the case was one arising under the Constitution or laws of the United States. The judicial

power of the Federal Government is limited and defined, and in order to give the court jurisdiction, which no errors in pleading can give, the court must find, as a question of law—

1st. That this public statute of the State of Louisiana (Act 118, 1869) contained in its terms a contract between the State and complainant by which complainant was guaranteed a monopoly for twenty-five years for keeping slaughter-houses.

2d. That it was within the power of the Legislature to make such a contract.

3d. That the obligation of such a contract was impaired by articles 248 and 258 of the State constitution of 1879.

These are all purely legal questions and involve no question of fact. In the State courts of Louisiana we have no distinction between courts of law and equity, and this confusion has crept into the Federal courts in Louisiana in equity causes. The questions raised by the bill in this case not depending upon any fact, counsel was in doubt as to the best and quickest way to get a speedy decision. Therefore the demurrer, pleas, and answer were filed together. This seems clearly permissible under the liberal equity rules long since adopted by this Court :

RULE 32. "The defendant may, at any time before the bill is taken for confessed, or afterwards with leave of the court, demur or plead to the whole bill or to part of it, and he may demur to part, plead to part, and answer as to the residue."

RULE 37. "No demurrer or plea shall be held bad and overruled upon argument only because the answer of the defendant may extend to some part of the same matter as may be covered by such demurrer or plea."

According to the authority cited by my adversary, double pleas are often allowed when not inconsistent, and in the

case of Saltus *vs.* Tobias, cited by him, (7 Johnston's Chancery, 214,) the court did not render a final decree against the defendant, but only ordered him to elect upon which plea he would stand.

The complainant set down the demurrer for argument, and also set down the pleas for argument as to their sufficiency, (p. 24.) When the court below overruled the demurrer and pleas, the defendants withdrew their answer, and a decree for a perpetual injunction was immediately rendered. (Record, p. 27.) If we strike out all the pleadings of the defendant, the question still remains, are the complainants entitled on the face of their bill to the decree rendered? Had the court below jurisdiction on the face of their bill?

The plaintiff's whole case, both as to the jurisdiction of the circuit court and as to the relief asked, depended exclusively upon the public statute. (No. 118, of 1869.)

The complainant concedes that the State or the municipal corporation could abolish the slaughter-house of the Crescent City Company, and thus destroy it altogether, and I am utterly unable to appreciate the force of the reasoning which admits this power and yet denies the power to open the door to competition, and to destroy and repeal the penal clauses of the statute of 1869, and to permit the municipal authorities to designate other places where slaughtering might be done.

The Court will observe, that by Art. 248 of the State constitution the police power for the regulation of slaughter-houses, &c., is taken away from the Legislature and conferred upon the municipal authorities alone. Therefore, the city council alone have the power to regulate slaughter-houses, and to fix the place for slaughter-houses; but in doing so they can confer no monopoly nor exclusive privilege, nor confine the business to the lands or houses of any individual or corporation.

No monopoly is taken away from one company and conferred upon another.

If this had been done I would not have a word to say in defence of this suit.

The learned counsel on the other side argues that the police power can only be used in *restraint* of the citizen, and quotes that great thinker, Jeremy Burtham, to the effect that "Police is a system of precaution either for the prevention of crimes or calamities."

Could any calamity be worse than that a single corporation should have a monopoly of keeping slaughter-houses, stock-yards, and pens, and so control the food supply of a city of nearly 300,000 people, and a territory of nearly 1,200 square miles; could any calamity be worse than the enhanced price of food, caused by such a monopoly?

It is another calamity to have to haul the meat several miles in a tropical sun over the rough cobble stones to the market-houses.

To say it is not within the police power to prevent such calamities, nor to overturn the calamity of such a monopoly, which, for fifteen years, has oppressed the people, because the State in doing so has imposed no additional restraints and burdens, seems absurd to the last degree.

We note that on page 21 of his brief the adverse counsel maintains that, so far as the limits in which slaughtering may be done, Act 118, 1869, is in full force and unaffected by article 248 of the constitution of 1879. If so, why is he in the Federal Court complaining that the obligation of any contract has been impaired? The limits fixed by the act of 1869 were the premises of the complainant, and if these limits are unchanged and unaltered by the subsequent act of the State, how has the *State* impaired the obligation of his pretended contract?

Why did the Crescent City Slaughter-house Company prosecute a writ of error from this honorable court to reverse the decision cited, (33 A., 939,) and then discontinue the

writ just before the case would have been reached for argument?

If the police provisions of Act 118, 1869, are still in force, what business has the complainant in the Federal Court asking their enforcement?

It is because he knows full well that no court in Louisiana would enforce its penal provisions that he asks the Federal Court to enforce them by an injunction.

I beg leave to print here a recent decision of the supreme court of Louisiana on this subject not yet reported:

Decided January 21st, 1884.

STODARD HOWELL
vs.
THE BUTCHERS' UNION SLAUGHTER-HOUSE AND LIVE-STOCK COMPANY. } No. 8925.

Appeal from the Civil District Court for the Parish of Orleans.

Mr. Justice Manning delivered the opinion and decree of the court in these words and figures, to wit:

This suit is an injunction by a resident of New Orleans to restrain and prevent the erection of a slaughter-house and its adjuncts, hog-pens, stock-yards, &c., by defendant, for the reason that they would be a nuisance, and would destroy the health of the neighborhood and impair the value of his property, and also to protect the cutting of the levee, which he alleges it was about doing, for purposes connected with its slaugh- tering.

The answer denies that a slaughter-house at that particular spot would be prejudicial to health or hurtful to property, and avers that the plaintiff has all along encouraged and invited its location there, and continued acquiescence up to and during the time the buildings were erecting.

A slaughter-house is *prima facie* a nuisance, but it does

not follow that it is a nuisance to all the world. To those who are remote from it, or not near enough to be affected by it, it is as if it did not exist. The spot selected for this building is on the verge of the city limits. The location has been approved by the Board of Health, and the plaintiff welcomed it to his neighborhood.

The main ground of contest on the trial seems to be that the location was within the city limits, which, the plaintiff claims, is prohibited by Act 118 of 1869, Sess. Act, p. 170.

The prohibition in that act of slaughtering animals for food within New Orleans is coupled with the permission of the company mentioned therein to do it. It was but a form of expression by which a monopoly of that business was given to the Crescent City Live-Stock Landing and Slaughter-House Company. Since then the constitution has interposed a prohibition of monopolies, and delegated the regulation of this particular business to the municipal authorities of this city. This was an abrogation of the exclusive privilege theretofore granted, and a conferring upon the local government the right to say how and where it should be exercised in future. This right was legally conferred.

Crescent City L. S. L. Co. *vs.* New Orleans, 33 Ann., 934.

The city authorities had not acted on the matter when this injunction was obtained, but since then, and before the trial they enacted ordinances that have been approved by the Board of Health, under which the location of a slaughter-house at this point is permitted. The plaintiff anticipated the Board of Health in the permission it gave, and the city council, in fixing the limit beyond which a slaughter-house might be placed, only confirmed the opinion expressed by the plaintiff upon the appropriateness of the spot.

The supplemental answer charges that he does not now apprehend a nuisance, or believe that the location of this slaughter-house there will create one, but is lending his name

to the company which has long exercised the exclusive privilege of slaughtering animals for food, under the act of 1869, to assist it in continuing the enjoyment of that monopoly. The boundary of his property is four hundred and eighty feet distant from the boundary of the tract or parcel of land upon which the defendant was erecting its buildings, and it does not yet appear that this is not sufficiently remote to avoid any annoyance from the business the defendant proposes to conduct in them.

The second ground of injunction is that the defendant intended to cut the levee which would expose the plaintiff's property to danger from inundation. The record is barren of proof to sustain the charge, except that a ditch or drain was digging from the building to the river, and a discharge pipe was to be inserted through the base of the levee, both to serve as a vent for the liquid from the abattoir. This is one of the appliances of the defendant to prevent the creation of a nuisance, and is similar to that now used by the company now engaged in slaughtering. An experienced engineer is employed by the defendant to construct the necessary outlet for impure liquids, and every precaution is taken to avert the consequences suggested by the plaintiff. It seems inconsistent and querulous for him to complain of an apprehended nuisance, and in the same breath to prevent the precautions that are taken to prevent the nuisance.

The lower court dissolved the injunction as to the slaughter-house and perpetuated it as to cutting the land, at the defendant's costs.

The defendant was without authority to place the slaughter-house at this spot until the city authorities had exercised the power delegated to them in the matter; but after they had acted, the company should not be mulcted in costs for availing itself of the permission granted, in the absence of proof that any damage has resulted therefrom.

It is, therefore, ordered, adjudged, and decreed that the judgment of the lower court is set aside, and the injunction

of plaintiff is dissolved, the defendant to pay all costs incurred before the passage of the city ordinance in the record, and the plaintiff to pay those incurred thereafter.

A true copy.

(Signed) GEORGE W. DUPREE, *Clerk.*

The counsel for plaintiffs, at page 13 of his brief, seeks to drag by the ears into this case the Gas-Light Company and the Water Works Company, and remarks, with something of a sneer, that these articles of the constitution of Louisiana were passed by a State convention which repudiated the State debt.

The gentleman was himself a distinguished member of that convention, and I find him recorded as having voted twice for article 248, on a call of the ayes and noes.

This article was one which engaged the especial attention of the convention. It was article 21 of ordinance 439, reported by the committee on corporations and corporate rights.

As first reported by the committee, this article read: "The police juries of the several parishes and the constituted authorities of all incorporated municipalities of the State shall alone have the power of regulating the slaughtering of cattle and other live stock within their respective limits, provided the ordinances designating the places for slaughtering shall obtain the concurrrent approval of the board of health or other sanitary organization."

This article came up for consideration on 12th July, 1879. (Journal, page 265, near bottom of page, and page 266.)

Mr. Forman moved to amend article 21 by inserting in line 8, after the word *limits*, "provided no monopoly or exclusive privilege shall exist in this State, nor such business be restricted to the lands or houses of any individual or corporation."

The previous question was then ordered, the ayes and noes called for on the amendment, and Mr. Semmes is re-

corded as voting for this amendment, and the article as amended was then adopted, *nemine contradicente.*

This same article came up on third reading and final passage on 22d July, 1879, and Mr. Semmes is again recorded as voting for it. (Journal, p. 319.)

It ill becomes him to reproach the people of the State for adopting an article which he recommended to them and twice deliberately voted for on the call for the ayes and noes.

As to the charge of repudiation of an honest debt, justly due; in behalf of the people of Louisiana, I deny and repel the charge so unnecessarily dragged into this case by my adversary.

The first thing after H. C. Warmoth was installed as Governor by the general of the army, in 1868, he repudiated outright a debt of over $7,000,000, largely incurred to support the State government during a time when taxes could not be collected by reason of the civil war. Then H. C. Warmoth's administration, by wild and reckless extravagance, and the illegal and unconstitutional issue of millions of bonds and warrants, heaped up a nominal debt of many millions. Then the armed forces of the United States installed W. P. Kellogg as Governor, and he at once proceeded to repudiate forty per cent. of the debt, good and bad, honest and dishonest, and in the process of funding committed worse frauds on the people than ever. Is it to be wondered at, that when self-government was restored the people of Louisiana, so long burdened with oppressive taxation, reduced the interest on this funded debt, somewhat arbitrarily, if you will, yet not unjustly? Considering human nature as it is, the fact that they did not touch the principal, commends their moderation.

Respectfully submitted.

B. R. FORMAN,
Counsel for Defendant and Appellant.

Supreme Court of the United States.

October Term, A. D. 1882.

No. 627.

THE BUTCHERS UNION SLAUGHTERHOUSE AND LIVE STOCK LANDING COMPANY, APPELLANT,

versus

THE CRESCENT CITY LIVE STOCK LANDING AND SLAUGHTERHOUSE COMPANY, APPELLEE.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

BRIEF OF APPELLANT, DEFENDANT IN COURT BELOW.

B. R. FORMAN,
Of Counsel.

E. F. Hansell, Stationer and Printer, 30 Camp Street, New Orleans.

Supreme Court of the United States.

October Term, A. D. 1883.

No. 627.

THE BUTCHERS UNION SLAUGHTERHOUSE AND LIVE STOCK LANDING COMPANY, APPELLANT,

versus

THE CRESCENT CITY LIVE STOCK LANDING AND SLAUGHTERHOUSE COMPANY, APPELLEE.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

BRIEF OF APPELLANT, DEFENDANT IN COURT EBLOW.

The complainant alleged in his bill that the act of the legislature of Louisiana, No. 118, 1869, which conferred on complainant the exclusive right to keep slaughterhouses, live stock landings and abattoirs in the then parishes of Orleans, St. Bernard and Jefferson, was a contract between itself and the State of Louisiana; that articles 248 and 258 of the constitution of Louisiana of 1879, and the ordinance of the city council passed under the power granted to it by article 248, designating places where slaughterhouses might be built and carried on, impaired the obligation of the said contract, and were so void under art. 1, sec. 10 of federal constitution. Complainant alleged that the defendants were about to erect, maintain and carry on a slaughterhouse in New Orleans within the limits designated by

city ordinance, and so violate what the complainant complained to be their exclusive rights under act 118 of 1869, and prayed for an injunction to protect them in their monopoly. (See page 6 printed record, page 16 manuscript.) Defendants, desirons to expedite the cause, on the same day filed demurer pleas and answer, as permitted by the 32d and 37th equity rules; and finding the opinion of the circuit judge against defendants on the vital question, withdrew the answer and submitted the case on the demurrer and pleas; and thereupon a final decree for a perpetual injunction was rendered (record, page 27), from which this appeal is prosecuted.

So all the allegations of matters of fact, well pleaded in the bill, are admitted to be true.

Since both parties are citizens of Louisiana the circuit court of the United States could only get jurisdiction if the case arose under the laws and constitution of the United States, under the grant of judicial power to the federal government in the constitution of the United States, article 3, section 2. Therefore, to give the United States circuit court jurisdiction, the court must find, as a question of law—

1st. Whether the act of the legislature of Louisiana, No. 118, 1869, so far as it conferred upon the complainant the monopoly and exclusive privilege of keeping and maintaining slaughter-houses in the three parishes of Orleans, Jefferson and St. Bernard, was a *contract* between the company and the State.

2d. Whether the articles 248 and 258 of the State constitution of 1879, and the city ordinance passed pursuant to article 248, impaired the obligation of the contract as to complainant.

We will copy here so much of act 118, 1869, as applies to this question, and we think an inspection of the statute will show that it is—1st, a public statute, creating a new crime or misdemeanor, and imposing a fine; 2d, a statutory exercise of the police power of the State, and not the subject of a contract; and, 3d, a temporary license or privilege, revocable at the will of the State.

An act to protect the health of the city of New Orleans; to locate the stock landings and slaughterhouses, and to incorporate "The Crescent City Live Stock Landing and Slaughterhouse Company."

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened*, That from and after the first day of June, A. D., eighteen hundred and sixty-nine, it shall not be lawful to land, keep or slaughter any cattle, beeves, calves, sheep, swine or other animals, or to have, keep or establish any stock landing, yards, pens, slaughterhouses or abattoirs at any point or place within the city of New Orleans or the parishes of Orleans, Jefferson and St. Bernard, or at any point or place on the east bank of the Mississippi river within the corporate limits of the city of New Orleans, or at any point on the west bank of the Mississippi river above the present depot of the New Orleans, Opelousas and Great Western Railroad Company, except that the "Crescent City Stock Landing and Slaughterhouse Company" may establish themselves at any point or place, as hereinafter provided. Any person or persons, or corporation or company carrying on any business or doing any act in contravention of this act, or landing, slaughtering or keeping any animal or animals in violation of this act, shall be liable to a fine of two hundred and fifty dollars for each any every violation, the same to be recoverable, with costs of suit, before any court of competent jurisdiction.

Section 2 incorporates the company.

Section 3 defines the duties and powers of the company, except the last sentence but one, which reads:

Any person or persons, firm or corporation, violating any of the provisions of this act, or interfering with the privileges herein granted, or landing, yarding or keeping any animals in violaion of the provisions of this act, or to the injury of said company or corporation, shall be liable to a fine or penalty of two hundred and fifty dollars, to be recovered, with costs of suit, before any court of competent jurisdiction.

Section 4 confers additional powers on the company.

Section 5 is a penal statute and reads as follows:

Sec 5. *Be it further enacted, etc.*, That whenever said slaughterhouses and accessory buildings shall be completed and thrown open for the use of the public, said company or corporation shall immediately give public notice for thirty days, in the official journal of the State, and within said thirty days' notice, and within, from and after the first day of June, A. D. eighteen hundred and sixty-nine, all other stock landings and slaughterhouses within the parishes of Orleans, Jefferson and St. Bernard shall be closed, and it will no longer be lawful to slaughter cattle, hogs, calves, sheep or goats, the meat of which is determined for sale within the parishes aforesaid, under a penalty of one hundred dollars for each and every offence, recoverable, with costs of suit, before any court of competent jurisdiction. That all animals to be slaughtered, the meat whereof is determined for sale in the parishes of Orleans or Jefferson, must be slaughtered in the slaughterhouses erected by the said company or corporation; and upon a refusal of said company or corporation to allow any animal or animals to be slaughtered, after the same has been certified by the inspector, as hereinafter provided, to be fit for human food, the said company or corporation shall be subject to a fine in each case of two hundred

and fifty dollars, recoverable, with costs of suit, before any court of competent jurisdiction; said fines and penalties to be paid over to the auditor of public accounts, which sum or sums shall be credited to the educational fund.

Section 6 authorizes the governor to appoint an inspector of cattle, and fixes his compensation and duties.

Section 7 fixes price for slaughtering, etc.

Section 8 provides for enforcing fines and penalties.

Section 9 confers new privileges on the company not involved in this case.

Section 10 limits the company's privilege to twenty-five years.

Section 11 repeals inconsistent laws.

Section 12 fixes 1st June, 1869, as when this penal statute shall take effect.

The court will observe that there is no grant of franchise for a term of twenty-five years, but the grant is for no definite term; but section 10 says "the privileges herein granted shall expire after the lapse of twenty-five years."

The constisutionality of this statute was vigorously fought, and was maintained by the State Supreme Court (22 Annual Reports, page 545), and by this honorable court (16 Wallace 36), solely as the legitimate exercise of the police power of the State, using a corporation as an instrument to carry out its will.

The Supreme Court of Louisiana in the case cited (22 A., page 545) expressly decided that this act, No. 118, 1869, was a public statute, and maintained its validity as an exercise of the police power of the State. The opinion of the majority of this honorable court, in 16 Wallace 36, sustains this statute expressly on the ground that it is an exercise of the police power of the State to protect the health of the inhabitants. Four of the judges held that this statute was in derogation of the fourteenth amendment of the constitution of the United States.

After this decision the whole business of slaughtering cattle, hogs and sheep, keeping slaughterhouses and supplying animal food to nearly three hundred thousand inhabitants in an area of twelve hundred square miles, was concentrated

in this single corporation, and the business of dealing in live animals intended for food concentrated in the hands of its largest stockholders. So great was this grievance, so oppressive has been this huge and grinding monopoly, that the people of Louisiana, represented in constitutional convention, adopted the following articles:

Article 46. "The general assembly shall not pass any local or special law on the following specified objects: * * * Granting to any corporation, association or individual any exclusive right, privilege or immunity."

Then, lest it be said this applied only to future grants—

Article 248. "The police juries of the several parishes and the constituted authorities of all incorporated municipalities of the State shall alone have the power of regulating the slaughtering of cattle and other live stock within their respective limits; provided no monopoly or exclusive privilege shall exist in this State, nor such business be restricted to the land or houses of any individual or corporation; provided the ordinances designating places for slaughtering shall obtain the concurrent approval of the board of health or other sanitary organization."

Article 258. * * * "The monopoly features in the charter of any corporation now existing in the State, save such as may be contained in the charters of railroad companies, are hereby abolished."

The intention is clear and the language broad enough to abolish the exclusive privileges of the plaintiff.

Thereupon, the present complainants, setting up this statute, No. 118, of 1869, and claiming it to be a contract with them for an exclusive privilege and irrepealable, sued in the State courts, and enjoined the city council of New Orleans from exercising the powers conferred by article 248, of the State constitution The Supreme Court of Louisiana decided adversely to their pretensions, in 1881 (Crescent City Live Stock Landing and Slaughterhouse Company vs. City of New Orleans, 33 Louisiana Annual

Reports 934); and the company prosecuted a writ of error from this honorable court, which they discontinued and dismissed on the 22d of January, 1884, and thus acquiesced in the decision of the State court against them.

After the decree of the State Supreme Court was rendered, in 1881, dissolving and setting aside the injunction, the city council of New Orleans passed the following ordinances, which, as finally amended, received the approval of the State board of health:

MAYORALTY OF NEW ORLEANS,
CITY HALL, September 13, 1881.

[No. 7336—Administration Series.]

An ordinance designating the places for slaughtering animals intended for food in the parish of Orleans, under article 248 of the constitution.

Section 1. *Be it ordained by the common council of the city of New Orleans*, that it shall be lawful for any person or corporation, to erect, keep and maintain slaughterhouses, abattoirs, live stock landings and pens, within the following limits: The lower line of Poland street, the Mississippi river and Goodchildren street, on the left or east bank of the river, and below the depot of Morgan's Texas railroad on the right bank of the river.

Sec. 2. That all slaughterhouses, abattoirs, live stock landings and pens, or other places keeping, preserving or slaughtering animals intended for food in the parish of Orleans, shall be provided with adequate steam pumps and water pipes, and an abundant supply of water, cold and warm, for flushing and daily washing, and keeping clean and healthy such places; with large closed pipes leading into the river, below low water mark, amply sufficient for carrying off into deep water all the washings and water used in washing and flushing and shall, moreover, be provided with a nuisance boat, or barge or barges, constructed in a manner similar to the one now in use by the city and vidangeurs, amply sufficient to hold and contain and carry off daily all offal, filth and waste of such slaughterhouses or abattoirs; and no such offal or filth shall be emptied into the river within the limits of the parish of Orleans, but the same shall be daily emptied into a nuisance boat or barges, and daily towed and emptied into the middle of the river below the line of the parish of Orleans. Such places shall be subject to such further sanitary regulations as may hereafter be prescribed by the municipal authorities.

Sec. 3. Any person who shall slaughter any cow, bull, steer, beef, calf, sheep, lamb, hog, goat, kid or other animal within the parish of Orleans, above or outside of the limts designated in section first of this ordinance, or outside of slaughterhouses or abattoirs provided with the cleansing apparatus, and boats or barges required in section second, or who shall fail to tow away or empty daily all the offal and filth in the middle of the river below the parish of Orleans, shall be fined, on conviction before any recorder or police magistrate, not more than twenty-five dollars, and imprisoned not more than thirty days, or both, at the discretion of the recorder.

Sec. 4. The first section of this ordinance shall be submitted to the concurrent approval of the board of health or other sanitary organization.

Sec. 5. All laws, ordinances and regulations inconsistent with this ordinance are repealed.

Sec. 6. The mayor shall appoint, with the advice and consent of the

common council, one or more veterinary surgeons, or other persons skilled in knowledge of the diseases of caitle, inspectors of cattle, whose duty it shall be to inspect all animals intended for food before and after being killed, and who shall have power to destroy and have thrown into the nuisance boat any diseased or unhealthy meat unfit for food. The said inspector shall receive as his compensation a fee of five cents for each and every head of stock to be inspected, the said fee to be paid to the said inspector by the owner or possessor of said stock slaughtered.

Adopted by the council of the city of New Orleans, September 13, 1881.
Yeas—Delamore, Fagan, Fitzpatrick, Guillotte, Huger, Walshe.
Absent—Mealey.

JOS. A. SHAKSPEARE, Mayor.

A true copy:
W. JOHN MCCALL, Assistant Secretary.
Promulgated 14th September, 1881.

MAYORALTY OF NEW ORLEANS,
CITY HALL, October 13, 1881.

[No. 7376—Administration Series.]

An ordinance amending the first section of city ordinance No. 7336, administration series.

Be it ordained by the common council of the city of New Orleans, that the first section of ordinance No. 7336 be amended and reënacted so as to read as follows:

"It shall be lawful for any person or corporation to erect, keep and maintain slaughterhouses, abattoirs, live stock landings and pens, within the following limits: The lower line of the parish of Orleans, Poland street, the Mississippi river and Goodchildren street, on the left or east bank of the river, and below the depot of Morgan's Texas railroad on the right or west bank of the river."

Adopted by the council of the city of New Orleans, October 11, 1881.
Yeas—Delamore, Fagan, Fitzpatrick, Guillotte Huger, Mealey, Walshe.

JOS. A. SHAKSPEARE, Mayor.

A true copy:
M. MCNAMARA, Secretary.
Promulgated October 18, 1881.

MAYORALTY OF NEW ORLEANS,
CITY HALL, November 18, 1881.

[No. 7437—Administration Series.]

Be it ordained, that ordinance No. 7376 be amended so as to read that Reynes street shall be the upper line in the parish of Orleans for the location of slaughterhouses, in lieu of Poland street

Adopted by the council of the city of New Orleans, November 17, 1881.
Yeas—Fagan, Fitzpatrick, Huger, and Walshe.
Nays—Delamore, Guillotte.

JOS. A. SHAKSPEARE, Mayor.

A true copy:
M. MCNAMARA, Secretary.
Promulgated November 18, 1881.

MAYORALTY OF NEW ORLEANS,
CITY HALL, September 13, 1881.

[No. 7336—Administration Series, as finally amended.]

An ordinance designating the places for slaughtering animals intended for food in the parish of Orleans, under article 248 of the constitution.

Section 1. *Be it ordained by the common council of the city of New Orleans*, that it shall be lawful for any person or corporation, to erect, keep and maintain slaughterhouses, abattiors, live stock landings and pens, within the following limits: The lower line of the parish of Orleans, Reynes street, the Mississippi river and Goodchildren street, on the left or east bank of the river, and below the depot of Morgan's Texas railroad.

Sec. 2. That all slaughterhouses, abattoirs live stock landings and pens, or other places keeping, preserving or slaughtering animals intended for food in the parish of Orleans, shall be provided with adequate steam pumps and water pipes, and an abundant supply of water, cold and warm; for flushing and daily washing, and keeping clean and healthy such places, with large closed pipes leading into the river, below low water mark, amply sufficient for carrying off into deep water all the washings and water used in washing and flushing, and shall moreover, be provided with a nuisance boat, or barge or barges, constructed in a manner similar to the one now in use by the city and vidangeurs, amply sufficient to hold and contain and carry off daily all offal, filth and waste of such slaughterhouses or abattoirs; and no such offal or filth shall be emptied into the river within the limits of the parish of Orleans, but the same shall be daily emptied into a nuisance boat or barges and daily towed and emptied into the middle of the river below the line of the parish of Orleans. Such places shall be subject to such further sanitary regulations as may hereafter be prescribed by the municipal authorities.

Sec. 3. Any person who shall slaughter any cow, bull, steer, beef, calf, sheep, lamb, hog, goat, kid or other animal within the parish of Orleans, above or outside of the limits designated in section first of this ordinance, or outside of slaughterhouses or abattoirs provided with the cleansing apparatus, and boats or barges required in section second or who shall fail to tow away or empty daily all the offal and filth in the middle of the river below the parish of Orleans, shall be fined, on conviction before any recorder or police magistrate, not more than twenty-five dollars, and imprisoned not more than thirty days, or both, at the discretion of the recorder.

Sec. 4. The first section of this ordinance shall be submitted to the concurrent approval of the board of health or other sanitary organization.

Sec. 5. All laws, ordinances and regulations inconsistent with this ordinance are repealed.

Sec 6. The mayor shall appoint, with the advice and consent of the common council, one or more veterinary surgeons, or other persons skilled in knowledge of the diseases of cattle, inspectors of cattle, whose duty it shall be to inspect all animals intended for food before and after being killed, and who shall have power to destroy and have thrown into the nuisance boat any diseased or unhealthy meat unfit for food. The said inspector shall receive as his compensation a fee of five cents for each and every head of stock to be inspected, the said fee to be paid to the said inspector by the owner or possessor of said stock slaughtered.

Adopted by the council of the city of New Orleans, September 13, 1881.
Yeas—Delamore, Fagan, Fitzpatrick, Guillotte, Huger, Walshe.
Absent—Mealey.

JOS. A. SHAKSPEARE, Mayor.

A true copy:
W. JOHN MCCALL, Assistant Secretary.
Promulgated 14th September, 1881.

I, Joseph A. Shakspeare, mayor of New Orleans, do hereby certify that the foregoing and annexed are true and correct copies of ordinances Nos. 7336, 7376 and 7437, administration series, and of No. 7336 as amended by the last two ordinances, and adopted by the common council or board of administrators on the days therein named, and duly promulgated and

approved by the board of health of the State of Louisiana. In testimony whereof, I have hereunto set my hand and the seal of the city of New Orleans, this 1st day of December, 1881.

OFFICE BOARD OF HEALTH,
STATE HOUSE, STATE OF LOUISIANA,
S. S. Herrick, M. D., Sec. and Treas. Joseph Jones, M. D., President.
NEW ORLEANS, 25 November, 1881.

At a meeting of the board of health of the State of Louisiana, this 25 November, 1881, all the members present, the following resolution was adopted:

Resolved, that this board of health concur in and approve ordinance No. 7376, administration series, adopted by the honorable common council, October 11, 1881, defining certain slaughterhouse boundaries, and which was amended by ordinance No. 7437, administration series, adopted by the honorable city council, November 17, 1881; ordinance 7437 reading as follows: "Be it ordained, that ordinance No. 7376 be amended so as to read that Reynes street shall be the upper limit in the parish of Orleans for the location of slaughterhouses, in lieu of Poland street." The effect of which amendment is to make ordinance No. 7376, now concurred in and approved, read as follows: "*Be it ordained*, it shall be lawful for any person or corporation to erect, keep and maintain slaughterhouses, abattoirs, live stock landings and pens, within the following limits: the lower line of the parish of Orleans, Reynes street, the Mississippi river and Goodchildren street, on the left or east bank of the river, and below the depot of Morgan's Texas railroad on the right or west bank of the river."

Yeas—Booth, Bosworth, Faget, Formento, Marks and Pratt. Nays—Jamison and Hernandez.

A true copy:

JOSEPH JONES, M. D.,
President Board of Health, State of Louisiana.

S. S. HERRICK, M. D.,
Secretary and Treasurer.

The Crescent City Slaughterhouse Company, (now appellees) then filed the bill in equity (now before this court) in the Circuit Court of the United States for the Eastern District of Louisiana, and obtained an injunction restraining the appellant from erecting or maintaining a slaughterhouse within the locality designated by the ordinances above quoted.

From a decree perpetuating this injunction this appeal is prosecuted.

ASSIGNMENTS OF ERROR.

The court below erred in holding—1st, that act 118, 1869, of the Louisiana legislature, was a contract between complainants and the State of Louisiana, within the meaning of article 1, section 10, of the constitution of the United States.

2d. That the said act contained a contract, that complainants should have the exclusive privilege of keeping and maintain-

ing slaughterhouses, etc., in the territory described, for twenty-five years.

3d. That the said legislative act was not repealable at the will of the State.

4th. That there was anything repugnant to article 1, section 10, of the constitution of the United States, in articles 248 and 258 of the State constitution of 1879, and the municipal ordinance passed under the police authority delegated by article 248.

ARGUMENT AND AUTHORITIES:

In stating the history of the case we have shown, by the decisions of the State Supreme Court in State ex rel. Belden vs. Fagan, 22 Annual Reports 545, and of this honorable court in the Slaughterhouse cases, 16 Wallace 36, that the statute in question, No. 118, 1869, is a public statute, and the exercise of the police power of the State. It bristles with penal legislation. It establishes new crimes and misdemeanors, and imposes fines and penalties.

The first section enacts; "Any person * * * landing, slaughtering or keeping any animal or animals, in contravention of this act, shall be liable to a fine of two hundred and fifty dollars for each and every violation. The third section repeats the same penal clause.

The fathers who framed the constitution of the United States never intended to designate such a statute as this by the term *contract.*

The police power is not the subject of contract. One legislature cannot bind the State never to repeal such a statute.

In Boyd vs Alabama, 94 U. S. 645, this court said: "We are not prepared to admit that it is competent for one legislature, by any contract with an individual, to restrain the power of a subsequent legislature to legislate for the public welfare, and to that end suppress any and all practices tending to corrupt the public morals."

In Beer Company vs. Massachusetts, 97 U. S. 25, the company had been chartered by the State for the purpose of brewing and selling beer. This court held, that a subsequent act, making it penal to make or sell beer, was not in derogation of the federal constitution, article 1, section 10. In the opinion the court said: "All rights are held subject to the police power of the State. * * * The plaintiff in error boldly takes the ground that, being a corporation, it has a right by contract to manufacture and sell beer forever, notwithstanding and in spite of any exigencies which may occur in the morals and health of the community requiring such manufacture to cease. We do not so understand the rights of the plaintiff. The legislature had no power to confer any such rights. Whatever differences of opinion may exist as to the extent and boundaries of the police power, and however difficult it may be to render a satisfactory definition of it, there seems to be no doubt that it does extend to the protection of the lives, health and property of the citizens, and to the preservation of good order and public morals. The legislature cannot by any contract divest itself of the power to provide for these objects," etc.

In Fertilizing Company vs. Hyde Park, 97 U. S. 659, the legislature of Illinois had incorporated the Fertilizing Company on March 8, 1867, for fifty years. Its capital stock was $250,000, paid up and invested in the business authorized by its charter. It was carrying on the business in the manner and at the place authorized by its charter. Subsequently, a municipal corporation was created, including the inhabitants which these chemical works had drawn together, and this municipality was given power to abate nuisance, and a municipal ordinance was passed, which, if enforced, would destroy the business of the company which it was chartered to carry on. The company claimed that it was protected by its charter from the enforcement of the ordinances, and that its charter was a contract within the meaning of the constitution of the United States. This court said (page 666): "The rule of construction is that it

shall be most strongly against the corporation. Every reasonable doubt is to be resolved adversely. Nothing is to be taken as conceeded but what is given in unmistakable terms, or by an implication equally clear. The affirmative must be shown. Silence is negative and doubt is fatal to the claim. This doctrine is vital to the public welfare It is axiomatic in the jurisprudence of this court." And the court held that the fertilizing company might be compelled to tear down and remove its works.

So in Stone vs. Mississippi, 101 U. S. 814, the court said: "* * * It is to be kept in mind that it is not the charter which is protected (by the federal constitution), but only any contract the charter may contain. If there is no contract there is nothing in the grant on which the constitution can act. Consequently the first inquiry in this class of cases always is whether a contract has in fact been entered into, and, if so what its obligations are. * * * Whether the alleged contract exists or not depends on the authority of the legislature to bind the people of the State in that way.

"All agree that the legislature cannot bargain away the police power of the State. Irrevocable grants of property and franchises may be made if they do not impair the supreme authority to make laws for the right government of the State; but no legislature can curtail the power of its successors to make such laws as they may deem proper in matters of police. Many attempts have been made in this court and elsewhere to define the police power, but never with entire success. It is always easier to determine whether a particular case comes within the general scope of the power, than to give an abstract definition of the power itself, which will be in all respects accurate. No one denies, however, that it extends to all matters affecting the public health or the public morals. * * * The power of governing is a trust committed by the people to the government, no part of which can be granted away."

The same principles were reaffirmed in Spring Valley Water

Works vs. Schottler, at this term, reported in Supreme Court Reporter, volume 4, paragraph 2, page 48.

It will, doubtless, be conceded by the appellee that under the authority of the fertilizer company's case that the Crescent City Company might be abolished altogether, and compelled, by the State or municipality, to tear down and remove its slaughter-houses and discontinue its business; but they insist that the State cannot open the door to competition. The State may destroy it altogether, but it cannot take away its monopoly privileges, conferred by a police and penal statute. Is not this too narrow a view of the police power of the State? Is the State more concerned with stinks and sweet smells than with cheapness of food to its citizens?

A monopoly in the business of keeping stocklandings, stock yards and slaughterhouses, etc., enables, with greater facility, rings and combinations to be formed for dealing in in cattle, sheep and hogs. A few large shareholders in the slaughter-house company have, since 1869, controlled the cattle market in New Orleans. Their influence in the management of the slaughterhouse enables them to get better facilities, more eligible pens, readier attention, and facilitates combinations to keep up the price of animals intended for slaughter. Is it not now the duty of the State to take precautions against the continuance of this state of things, by destroying and prohibiting monopolies, and providing that the business of keeping slaughterhouses shall not be restricted to the lands or houses of any individual or corporation; and by so opening the door wide to free competition, insure a cheaper supply of food to the inhabitants? Is not this more conducive to the good health of the people than to abolish a bad smell? Bad smells are not in themselves unhealthy; the butchers and slaughter-house people are as healthy and long-lived as others. But animal food is a necessity. Man is a carniverous animal. The shape of his teeth and the character of his digestive apparatus

show that he needs animal food. It is therefore much more within the police power of the State to secure the cheapest possible animal food for the people, by the freest and widest competition, and by abolishing all monopolies, than it is to put a stop to a bad smell.

With what show of reason can it be held that it is within the police power of the State to prohibit the sale of that harmless and pleasant beverage beer, lest man should thereby learn the use of spirits, and not within the police power to abolish monopolies in animal food?

No one is ever forced to buy lottery tickets, and comparatively few people in the community habitually indulge in this form of gambling; every one needs and must have some animal food to keep in good health: yet can it be said that the prohibition of lottery tickets is within the police power and the monopoly of the slaughterhouse business, in a large city, and a consequent monopoly in the cattle trade, is not within the police power of the State or the municipality?

It has been often said by this court that "the power to tax is the power to destroy," which might be paraphrased by saying, "the power to diminish is the power to destroy." It is conceded that the State has the power to destroy the complainant's slaughterhouses, but it is contended that it has no power to diminish its powers and functions by opening the door to free competition. Things that are equal to the same thing are not equal to each other, in law as in mathematics. In law the whole is less than its parts. Such is the logic, the exigencies, of the appellee's case, compel their counsel to adopt.

Respectfully submitted,

B. R. FORMAN,

Of Counsel.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1883.

No. 627.

THE BUTCHERS UNION SLAUGHTER-HOUSE AND LIVE STOCK LANDING COMPANY, *Appellant,*

vs.

THE CRESCENT CITY LIVE STOCK LANDING AND SLAUGHTER HOUSE COMPANY, *Appellee.*

THOS. J. SEMMES,

Of Counsel for Appellee.

A. W. Hyatt, Print, 7 Camp St., N. O. —8,500

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1883.

No. 627.

THE BUTCHERS' UNION SLAUGHTER HOUSE AND LIVE STOCK LANDING COMPANY, APPELLANT,

versus

THE CRESCENT CITY LIVE STOCK LANDING AND SLAUGHTER HOUSE COMPANY, APPELLEE.

THOS. J. SEMMES,
Of Counsel for Appellee.

A. W. Hyatt, Print, 73 Camp St., N. O. -28,200

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 627.

THE BUTCHERS' UNION SLAUGHTER HOUSE AND LIVE STOCK LANDING COMPANY, APPELLANT,

versus

THE CRESCENT CITY LIVE STOCK LANDING AND SLAUGHTER HOUSE COMPANY, APPELLEE.

The bill avers that complainant was required by its charter, known as Act No. 118, of 1869, to build and maintain slaughter houses, yards, pens, etc., and to have and maintain at least one slaughter house, of a capacity adequate for slaughtering five hundred animals per day, all of which constructions by the terms of said act and its amendments were to be located below the United States Barracks, on the east, and below the depot of the Opelousas (now Morgan's) Louisiana and Texas Railroad on the west side of the Mississippi river, and that said act prohibited slaughtering of all animals anywhere within the boundaries of the Parishes of Orleans, Jefferson and St. Bernard, outside of the limits established by said act or at any place or places within the limits thus established other than the slaughter houses of the complainant.

2. In consideration of the premises and the large outlay required, and for purposes considered by the legislature to concern the public health and convenience, the State, by said Act, No. 118, granted to complainant, for a term of twenty-five years, the exclusive right and privilege of maintaining slaughter houses, yards, sheds, etc., and landings for the landing of all animals intended

for human food, in the Parishes of Orleans, Jefferson and St Bernard.

3. That said Act No. 118, embodied a contract between the State and complainant, and on the faith thereof the complainant expended $500,000 in the purchase of lands and the construction of the requsite buildings thereon; that the slaughter houses and other buildings of the company have been erected in conformity to the requirements of Act No. 118, and the company has for ten years, used them in the prosecution of a successful business which has made valuable the capital stock of the company consisting of ten thousand shares of $50 each

4. That prior to the passage of Act No. 118, moved by consideration of the public health of the City of New Orleans and its vicinity, the State had adopted the settled policy, as evidenced by various acts of the Legislature, to confine the business of landing and slaughtering animals below or near to the lower boundaries of the City, but that it had not been practicable to enforce said policy until the passage of said Act No. 118.

5. That the Supreme Court of the State had recently decided in a suit between the complainant and the City of New Orleans, that Articles 248 and 258, of the Constitution of 1879, had not repealed or modified so much of said Act No. 118, as had reference to the limits within which the business of stock landing and slaughtering might be carried on.

6. That the defendant, combining with the members of the Council of the City of New Orleans, and of the State Board of Health, in disregard of the decision of the Supreme Court of Louisiana, and of the exclusive rights of complainant, had applied to the Council to establish by ordinance, with the approval of the Board of Health, *certain boundaries outside of the said limits, established by said Act No. 118, and acts amendatory thereof and within the corporate limits of the City of New Orleans, and above the United States Barracks, within which the said defendant company*

and other individuals and companies may be allowed to carry on said business of live stock landing and slaughtering for the supply of the population of New Orleans and its vicinity; and that the City Council had recently passed two ordinances in disregard of said decision of the Supreme Court of Louisiana, and of the exclusive rights of complainant, and thereby assumed to establish certain limits within the City of New Orleans and outside of the limits established by said Act No. 118, and its amendments, within which it shall be lawful for any individual or company to construct slaughter houses and landings, and carry on the business of slaughtering and live stock landing upon complying with the conditions set forth in said ordinances.

7. That on 18th November, 1881, at a conference held at the City Hall, between a committee of the Board of Health and the members of the City Council, an ordinance was agreed upon, and on the same day adopted, amending a certain ordinance called No. 7376, so as to read: "That Reynes street shall be the upper limit in the Parish of Orleans, for the location of slaughter houses, in lieu of Poland street."

8. That said ordinance will meet the approval of the Board of Health, and thereupon the defendant, unless restrained, will proceed at once to construct slaughter houses, yards and landings at a point within the corporate limits of New Orleans, on the left bank of the river, and above the United States Barracks, and there carry on the business of live stock landing and slaughtering, in disregard of the prohibitions of Act No. 118, and of the exclusive rights conferred on complainant by its contract, as expressed in said Act.

9. That the defendant company and its confederates justify their action on the ground that Article 248 of the Constitution of Louisiana, revoked the power granted to the complainant of said Act 118, and repealed the exclusive privilege therein granted.

10. That said Act No. 118 embodies a contract protected from impairment by the tenth section of the first article of the Consti-

tution of the United States, and that Article 248 of the State Constitution, as interpreted by the defendant and its confederates and the Supreme Court of Louisiana, is null and void for repugnancy to the Constitution of the United States.

11. The prayer is for injunction commanding the defendant company to desist and refrain from constructing slaughter houses or erecting stock landings, and from carrying on the business of slaughtering or stock landing anywhere within the limits of the Parishes of Orleans, Jefferson or St. Bernard, except at the slaughter houses, landings and premises of the complainant, and on the terms and conditions set forth in said Act No. 118.

The injunction prayed for was granted *pendente lite* and made perpetual on final hearing.

There is no doubt that an injunction was the proper remedy to protect the franchise claimed by the complainant.

Turnpike Co. vs. State, 3 Wall. 213; Binghampton Bridge, 3 Wall. 77.

This case is to be decided on the demurrer and pleas filed by the appellant.

In the Court below the defendant and appellant filed a paper styled a demurrer, plea and answer—pp. 17 and 19. After the case had been decided, the defendant concluded to withdraw its answer and submit the case on the demurrer and plea—p. 27.

There is, therefore, no evidence in the case which can be considered by the Court.

The ordinances of the City of New Orleans copied in the brief of appellant's counsel, were offered on the preliminary application for an injunction, but constitute no part of the record. These ordinances are to be found at pages 10, 11 and 12 of the transcript.

The plea and the demurrer are to the whole bill.

It is well settled that a plea to the whole bill overrules a demurrer to the whole bill.

A defendant cannot demur, plead and answer to the whole bill or the same part of the bill.

Clark vs. Phelps, 6 John. Ch. 214.
Sanger vs. Demeyer, 2 Paige, 574.
Jones vs. Earl of Stafford, 3 Plomsing, 80.
Dormer vs. Fortescue, 2 Atk. 284.

Nor can a defendant demur and plead to the whole bill; the plea overrules the demurrer.

Lowndes vs. Garnet Gold Co., 2 J. & H. 282.
Mansell vs. Funy, 2 J. & H. 313.

The plea is vicious for duplicity. It contains four different and distinct defences.

1. It alleges that the charter of the Crescent City Company, complainant, was forfeited by the removal of its buildings from the right to the left bank of the Mississippi river.

2. It avers that the Court has no jurisdiction of the cause, because both plaintiff and defendant are citizens of Louisiana.

3. It avers that the same matters and things are pending in a suit between the same parties in the State Court.

4. It avers that under Article 258 of the State Constitution, all monopolies are abolished, and that Article 248 of the same Constitution, has vested in the constituted authorities of all incorporated municipalities in the State the power of regulating the slaughtering of cattle within their respective limits, provided no monopoly or exclusive privilege shall exist in the State, nor such business be restricted to the land or houses of any individual or corporation, provided the ordinances designating the places for slaughtering shall obtain the concurrent approval of the Board of Health or other sanitary organization.

It then proceeds to state "that pursuant to and under the authority conferred by this article, the City of New Orleans did pass an ordinance regulating houses, abattoirs, etc., and designating the limits or places where slaughter houses might be erected and carried on in the City of New Orleans, designating Reynes

street, Goodchildren street, the Mississippi river and the lower line of the Parish of Orleans, as the places or limits within which slaughter houses might be built, and said ordinance received the concurrent approval of the Board of Health, and thereafter this defendant, upon complying with said ordinance, has the legal right to erect and carry on slaughter houses and live stock landings within said limits. All which matters and things defendant pleads in bar to so much of the said bill as is hereinbefore pleaded to, and defendant prays the judgment of the Court thereon."

The defence proper for a plea is such as reduces the cause to a single point, and from thence creates a bar to the suit; and it relies upon matter not apparent in the bill, and if it insists upon matter which is apparent upon the face of the bill and might be taken advantage of by demurrer, the plea will not hold.

1 Daul. Ch. Pr. 605.

A negative plea, however, may rest upon the denial of the truth of some matter stated in the bill, upon which the plaintiff's right depends.

1 Daul. Ch. Pr. 605.

But a plea must put in issue facts, otherwise it is a demurrer.

Story, Eq. Pl., section 660.

Now, this plea questions, 1st, the corporate existence of the complainant; 2d, the jurisdiction of the Court on the ground of citizenship; if this ground be good, it is apparent upon the face of the bill; 3d, the right of the complainant to sue on account of the pendency of a similar suit in the State Court; 4th, the validity of the monopoly created by the charter of the complainant company; this also is apparent upon the face of the bill, which sets forth a case arising under the Constitution of the United States, and expressly avers that the Court has jurisdiction of the cause irrespective of the citizenship of the parties.

There is no doubt that the plea is double and for that reason should be overruled, as it was not filed by special leave of the Court. 1 Daul. Ch. Pr. 610.

Salter vs. Tobias, 7 John. Ch. 214.

Rhode Island vs. Massachusetts, 14 Pet. 259.

Story. Eq. Pl. section 654.

Daniel, in his Chancery Practice, p. 610, says: "Before a defendant puts in a double plea he must obtain an order or motion with notice, of which he will have to pay the costs for leave to do so, and such a plea, if filed without such an order, is irregular and liable to be overruled."

Chancellor Kent, in Salter vs. Tobias, 7 John. Ch. 214 ,says it is not the ordinary practice to admit a double plea, "but it lay with the Court upon special application to allow it," etc., and mentions a case in which such a power was granted upon motion. He referred to the case of Gibson vs. Whitehead, 4 Mad. Ch. Rep.

The 32d Equity rule allows a defendant to demur to part of the bill, plead to part and answer as to the residue; a similar rule prevails in England, but it was there held that the rule did not allow a defendant to demur and plead simultaneously to the whole bill.

Lowndes vs. Garnett Gold Co. 2 J. and H. 282.

As the plea is bad for duplicity and as the plea overrules the demurrer, I might here rest the case; but if the Court should determined to consider the cause on its merits as presented in the plea, I submit the following argument:

The first, second and third grounds relied upon in the plea may be dismissed without much consideration.

1. The Supreme Court of the State never decided that the removal of the slaughter house buildings was a ground of forfeiture; if, however, the facts were true, it is too plain for argument that such forfeiture could only be adjudged in direct proceedings instituted for that purpose by the State.

Morawetz, Corp., section 654.

2. The case made by the bill is clearly one in which the complainant invokes the protection of the Constitution of the United States against the hostile legislation of the State, which

undertakes to impair the contract created by the charter granted in 1869, and, therefore, the Court could entertain the suit without regard to the citizenship of the parties.

Railroad Co. vs. Mississippi, 102 U. S. 141.

3. The plea of *lis pendens* is defective because it does not aver that the suit in the State Court is for the same purpose, or that the same issue is joined; nor does it mention when the suit was commenced.

Story, Eq. Pl., section 737.

Under any circumstances it is bad, as was decided by the Court in Stanton vs. Embry, 93 U. S. 548.

4. The fourth ground of the plea is founded upon Articles 258 and 248 of the Constitution of Louisiana, adopted in 1879.

Article 258 abolished and prohibited all monopolies, and Article 248 vested in the municipal authorities "the power of regu-" lating the slaughtering of cattle and other live stock within their "respective limits, provided no monopoly or exclusive privilege shal "exist in this State, nor such business be restricted to the land or "houses of any individual or corporation; provided the ordinances "designating *places for* slaughtering shall obtain the concurrent "approval of the Board of Health or other sanitary organization."

The plea alleges "that pursuant to the authority vested by the above mentioned Article 248 in the City Council of New Orleans, that body passed an ordinance regulating slaughter houses, abattoirs, *etc., in the limits of the City of New Orleans, and designating the limits or places where slaughter houses* might be erected and carried on in the City of New Orleans, designating Reynes street, Goodchildren street, the Mississippi river and the lower line of the Parish of Orleans, as the place or limits within which slaughter houses might be built, and said ordinance received the concurrent approval of the Board of Health, and, thereafter, this defendant, upon complying with said ordinance, has a legal right to erect and carry on slaughter houses and live stock landings *within said limits*."

The limits within which cattle and other live stock may be

landed and the business of slaughtering conducted are fixed by the Act No. 118 of 1869, referred to in the bill.

The first section, which is printed in the brief of appellant's counsel, prohibits the landing or slaughtering of cattle, etc., at any point in the City of New Orleans on the east bank of the river, or at any point on the west bank of the river above the then depot of the Opelousas Railroad Company, "*except that the "Crescent City Live Stock Landing and Slaughter House Company "may establish themselves at* any point or place as hereinafter pro- "vided."

Section 3 provides "that the said company or corporation is hereby authorized to establish and erect at its own expense, at any point or place on the east bank of the Mississippi river, within the Parish of St. Bernard, or in the corporate limits of the City of New Orleans, below the United States Barracks, or at any point or place on the west bank of the Mississippi river, below the present depot of the New Orleans, Opelousas and Great Western Railroad Company, wharves, stables, sheds, yards and buildings necessary to land, stable, shelter, protect and preserve all kinds of horses, mules, cattle and other animals from and after the time such buildings, yards, etc., are ready and complete for business, and notice thereof is given in the official journal of the State; and the said Crescent City Live Stock Landing and Slaughter House Company shall have the sole and exclusive privilege of conducting and carrying on the live stock landing and slaughter house business within the limits and privileges granted by the provisions of this Act, and cattle and other animals destined for sale or slaughter in the City of New Orleans shall be landed at the live stock landing and yards of said company, and shall be yarded, sheltered and protected, if necessary, by said company and corporation," etc.

As we have to deal with an authority claimed under an ordinance passed by the City of New Orleans, I shall hereafter exclude all reference to the Parishes of St. Bernard and Jefferson.

The Parish of Orleans and the City of New Orleans are one and the same, in territory and government.

Section 2 of the City Charter, Act No. 7, of 1870, Extra Session, p. 30, declares that "all that portion of the Parish of Orleans, situated on the left bank of the Mississippi river, and all that portion of the Parish of Orleans, situated on the right bank of the Mississippi river, shall constitute the Parish of Orleans and the City of New Orleans," etc.

The boundaries of the City of New Orleans, in 1870, included all the territory on the river between the City of Carrollton, above, and the upper line of the Parish of St. Bernard, below the City. Section 71, Act No. 7, of 1870, p. 30.

The City of Carrollton was annexed to the City of New Orleans by Act No. 71, of 1874, p. 110, and was denominated the "Seventh District." Sec. 6. The United States Barracks are within the limits of the City of New Orleans, and the lower line of the Barracks' property is the upper line of the adjacent Parish of St. Bernard, as appears by an Act approved April 5, 1875, entitled

"AN ACT

"To change the boundary of the Parish of St. Bernard.

"SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened*, That hereafter the boundary of the Parish of St. Bernard shall be from the left bank of the Mississippi river, along the lower line of the property known and used as the United States Barracks, and the prolongation of said line until it intersects the prolongation of the line of the south side of Florida Walk, one of the avenues of the City of New Orleans, thence in an easterly direction to the point where the Canal des Pecheurs or Fishermen's Canal intersects the Bayou Bienvenue, thence along the south side of said Bayou to the Lake Borgne, and thence along the boundaries of said parish as now established to the left bank of said Mississippi river, where the Parish of Plaquemines begins."

See Act No. 23, p. 54.

On the 16th of May, 1877, the Legislature reaffirmed the charter of the complainant company by an Act approved on that day, and which I transcribe in full, viz:

"AN ACT

"To amend an Act entitled 'An Act to protect the health of the City of New Orleans, to locate the Stock Landing and Slaughter Houses, and to incorporate the Crescent City Live Stock Landing and Slaughter House Company.'

"SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened*, That Section one of said Act number one hundred and eighteen, approved March eighth, eighteen hundred and sixty-nine, be amended and re-enacted to read as follows: 'That from and after the first day of June, A. D., eighteen hundred and sixty-nine, it shall not be lawful to land, keep or slaughter any cattle, beeves, calves, sheep, swine or other animals, or to have, keep or establish any stock landing, yards, pens, slaughter houses, or abattoirs at any point or place within the City of New Orleans (except the Seventh District thereof) where such keeping or slaughtering shall be limited to the actual consumption therein, or the Parishes of Orleans, Jefferson and St. Bernard, except as aforesaid, or at any point or place on the east bank of the Mississippi river, within the corporate limits of the City of New Orleans, or at any point on the west bank of the Mississippi river, above the present depot of the New Orleans, Opelousas and Great Western Railroad Company, except that the Crescent City Stock Landing and Slaughter House Company may establish themselves at any point or place as hereinafter provided. Any person or persons, or organization, or company carrying on any business, or doing any act in contravention of this Act, or landing, slaughtering or keeping any animal or animals, in violation of this Act, except as herein provided, shall be liable to a fine of two hundred and fifty dollars for each and every violation, the same to be recoverable, with costs of suit, before any court of competent jurisdiction."

See Act No. 144, p. 220, Extra Session of 1877.

This amendment exempted the City of Carrollton which had been annexed in 1874 as the Seventh District of New Orleans, from the operation of the original Act, as appears by the words "except the Seventh District thereof, where such keeping and slaughtering shall be limited to the actual consumption therein."

The monopoly established by the Act No. 18 of 1869, incorporating the complainant company, was fiercely attacked soon after the passage of that Act, but the Supreme Court of the State maintained the validity of the charter, and of the monopoly created by it, in an elaborate opinion delivered in 1870.

State vs. Fagan, 22 A. 547.

This Court affirmed this decision of the Supreme Court of Louisiana in the Slaughter House cases.

16 Wall. 36.

It was supposed that litigation was ended; especially as the Supreme Court of the State had again maintained the validity of a monopoly, in favor of the Crescent City Gas Light Company, in a suit between that Company and the N. O. Gas Light Company, decided in 1875.

25 A. p. 139.

The only other monopoly in the city or State, is that of the Waterworks Company, resulting from a charter granted under the regime of what is termed the Nicholls Government, a regime of supposed purity, in contrast with the administrations of Gov. Warmoth and of Gov. Kellogg. Acts No. 43 of 1877 and 42 of 1878.

The Waterworks Company was created to relieve the city from liability on the bonds it had given for the purchase of the waterworks in 1869, and to enable the City to extinguish its floating debt by the use of the large amount of stock, which the charter reserved to the municipality to be applied to that purpose. The bond holders were invited to exchange their bonds for stock as appears by the provisions of the Act. They did so: the City disposed of nearly all its stock in payment of its debts; it was then discovered by the Constitutional Convention of 1879, that it had

the power to repeal all monopolies; so it enacted Article 258 in these words:

"All rights, actions, prosecutions, claims and contracts, as well of individuals as of bodies corporate, and all laws in force at the time of adoption of this Constitution, and not inconsistent therewith, shall continue as if the said Constitution had not been adopted. But the monopoly features in the charter of any corporation now existing in the State, save such as may be contained in the charters of railroad companies, are hereby abolished."

This article invited assaults on the complainant company, on the Gas Light Company, and on the Waterworks Company. All these companies are now before the Court seeking its protection from a State Convention which repudiated the State debt after a solemn compromise and settlement had been made with the creditors of the State, and which has repudiated the contracts made with the companies I have mentioned. The Gas Light Company's case is No. 532 on the docket of the Court, and the case of the Waterworks Company was filed last fall.

Before the State Convention of 1879 assailed the charter of the complainant company, an effort was made to compel the company to keep up its large establishment on the west bank of the river, after the removal to the east bank had been made at the request of nearly all the butchers. This was a suit brought by a butcher for damages resulting to him in consequence of that removal. The Court refused to award damages, but ordered the company to "re-open the slaughter house on the right bank of the "Mississippi river, and afford plaintiff and other butchers all "necessary facilities and accommodations for pursuing their "occupation."

Berthin vs. Crescent City, etc. Co., 28 A. 214. This case was decided in 1876. It did not involve the question of forfeiture, and whatever fault was committed, was condoned by the amendatory Act of 1877, No. 144, p. 220, Morawitz on Corp. Section 655. The fallacy which prevailed in the Constitutional Convention of 1879, and which fascinated the superheated socialistic imagina-

tions of the statesmen, who had been so long excluded from an opportunity to put in practice their theory, was this:

The Lottery Company can be suppressed under the police power. This Court so intimated in Boyd vs. Ala., 94 U. S. 645, and so held in Stone vs. Mississippi, 101 U. S. 814. The sale of liquors or beer can be suppressed in the exercise of the police power. It was so held in Beer Co. vs. Massachusetts, 97 U. S. 25.

A nuisance, resulting from the transportation of offal, and converting it into fertilizers, can also be suppressed in the face of a charter authorizing a corporation to conduct the business and fixing a place where it may be carried on. This was so held in the case of Fertilizing Co. vs. Hyde Park, 97 U. S. 659.

Therefore, as the complainant company, and the Gas Company, and the Waterworks Company, were organized and chartered by virtue of the police power, the State which cannot barter away such power, may at any time, authorize other persons or corporations to pursue the same business which the companies named pursue, notwithstanding an express contract that the said companies shall have for a fixed period the exclusive right of conducting said business.

The police power, which is inalienable, is thus made the fundamental basis of repudiation.

This Court held, in the Hyde Park Case, that there could be no contract, guaranteeing that the Fertilizing Company, notwithstanding its business, might become a nuisance by reason of the growth of population around the place originally selected for its works, should for fifty years be exempt from the exercise of the police power.

That is very different from the naked right now claimed, to repeal an exclusive privilege, simply because the privilege granted has reference to a business which, under certain circumstances, might be suppressed as a nuisance.

The right to suppress a nuisance is one thing, the right to authorize others to carry on a business, the monopoly of which has been granted to a particular individual or association is another

thing, and is not the exercise of the police power. The police power, in the sense in which it is used in the cases referred to, is the power by which the public is protected from nuisances or from immorality; it is, in its essence, the power to suppress, to regulate, to control; not the power to *create*.

Therefore, the repeal of the exclusive privilege of the complainant for the purpose of authorizing other persons to engage in the same business, is not an exercise of the police power of suppression or regulation; on the contrary, it aggravates the nuisance, by increasing the number of places where it may exist; it augments the evil, renders its control more difficult, and negatives the idea of nuisance or immorality, which is the germ of the police power.

Chancellor Kent says: "by this general police power of the State, persons and property are subject to all kinds of *restraints and burdens*, in order to secure the general comfort, health and prosperity of the State, and of the perfect right of the State to do which no question ever was, or upon acknowledged principles, ever can be made so far as natural persons are concerned." 2 Kent, 432.

In the case of Boyd vs. Ala. 94 U. S. 650, this Court evidently consider the police power a governmental power, to be exercised with a view "to *suppress* any and all practices tending to corrupt the public morals."

So, Mr. Justice Grier, in the License Cases, says: "Without attempting to define what are the peculiar subjects or limits of this power, it may safely be affirmed that every law for the restraint and punishment of crime, for the preservation of the public peace, health and morals, must come within this category. As subjects of legislation, they are from their nature of primary importance: they lie at the foundation of social existence; they are for the protection of life and liberty, and necessarily compel all laws or subjects of secondary importance, which relate only to property, convenience or luxury, to recede when they come in conflict or collision, *salus populi suprema lex*." 5 How. 631.

secured for a fixed period, it is equally clear that the duration of the existence of the corporation, and its privileges, become an essential part of the contract, and the main inducement of the corporation to agree to perform the proposed duty. The mere statement of the proposition carries with it the idea of rights vested by contract and protected by the Constitution of the United States.

The special and valuable privilege, and the only monopoly granted by the Act of 1869, to the complainant, has nothing to do with the exercise of the police powers of the State. Mr. Justice Field, in his dissenting opinion, delivered in the Slaughter House Cases, says, "that in the law in question, there are only two provisions which can properly be called police regulations; the one which requires the landing and slaughtering of animals below the City of New Orleans, and the other, which requires the inspection of animals before they are slaughtered. When these requirements are complied with, the sanitary purposes of the Act are accomplished. *In all other particulars the Act is a mere grant to a corporation, of special and exclusive privileges by which the health of the City is in no way promoted.*" 16 Wall. p. 69.

He alludes to the exclusive privilege by which the slaughtering business is required to be conducted in the establishments of the company, and nowhere else.

It is not disputed that the Legislature of Louisiana may enact additional regulations or police provisions for the more thorough and perfect execution of the Act of 1869. The power to regulate is part of the police power of the State, which cannot be bartered away.

The power to suppress, if necessary, to public health or morals, is also a police power which cannot be bartered away. But the power to suppress is the power to destroy, not to create or multiply; and the power to regulate is the power to make regulations, which refer to the comfort, safety and welfare of society, "they must not be in conflict with any of the provisions of the charter (of a corporation), and they must not, *under*

pretense of regulations, take from the corporation any of the essential rights and privileges which the charter confers.

Cooley, Const. Limit. 577.

The plea admits the allegations in the bill that it was the settled policy of the State, in view of the public health, to confine the business to localities below or near the lower boundaries of the City, and that its policy could not be enforced until the passage of Act No. 118 restricted the conducting of the business to the places selected by the complainant within the prescribed limits. It was only in that mode proper police regulations and inspection could be enforced. All experience confirms the policy of the Act No. 118.

A corporation or guild of butchers existed in Imperial Rome, and it was their exclusive privilege to slaughter animals for the supply of meat to the inhabitants of the city. Buildings for that purpose were at first located in various parts of the city, they were eventually confined to one place which formed the public meat market; this building, in the time of Nero, was one of the most imposing structures in the city.

In modern times, Napoleon I, by a decree Feb. 9th, 1810, authorized the construction of public abattoirs on the outskirts of Paris, and, as a result of the decree, five abattoirs were opened in 1818, costing $3,468,800.

The example set by Paris was imitated in the provincial cities of France. In 1849, Belgium resorted to the same system; since then all the large cities of Europe and most of the important cities in the United States have adopted the same plan.

The evils of the distributed or private slaughter house system, as compared with the concentrated or abattoir system, may be summarized as follows: 1. The necessity of driving cattle through the streets; 2. Carelessness in regard to the condition of the cattle when slaughtered; 3. The impossibility of preserving private slaughtering places perfectly clean and pure; 4. The transportation of offal and waste through the streets often in an exposed condition, and the discharge of waste, solids and liquids into the sewers and often into the gutters; 5. Lack of thorough inspec-

tion; 6. Failure to apply improved methods of killing; 7. The wretched moral effect of exposing the process of killing to the public and especially to children; 8. The increased cost as compared with the abattoir system and consequent increased cost of meat to consumers.

It is for these reasons that defendant did not venture to take issue on the allegations in the bill respecting the propriety of the passage of the Act 118, and its necessity to accomplish the object which the Legislature had in view, and which is expressed in the title to be "to protect the health of the City of New Orleans." This case was tried by the Circuit and District Judges, sitting together; and, in this connection, I quote from the opinion of the District Judge, reported in 4 Woods, p. 99.

"The extremest principle when applied to this case must lead to the conclusion that, if the proper municipal and health boards, in the exercise of the power delegated to them, declared that complainant's business, either in its location or its methods, was injurious to the public health, they could regulate, or, if in their judgment the public health required, abolish it; that the grant is voidable and not void; that it is valid until the power, be it in the Legislature or the municipal officers, in which is vested the function to deal with sanitary matters, finds it to be injurious. The conclusion is, that when, as here, the proper authorities find the place and manner of conducting complainant's business to be harmless, there exists no power, either in the Legislature or the people of the State, to abolish it. So, according to the cases which have gone the farthest, so long as the place and manner of the complainant's slaughtering animals are sanctioned by that organ of the government of the State in which is vested the police power with reference to that subject matter, the action of the Legislature in making the grant, stands for that of the people of the State, and the exclusiveness of the right granted is protected by Art. 1, Sec. 10, of the Constitution of the United States."

It is true that the Supreme Court of the State of Louisiana interpreted the doctrine announced by this Court in Stone vs. Miss-

issippi, in the manner contended for by the defendant, and actually decided that Articles 248 and 258 of the State Constitution abrogated the charter of the complainant so far as its exclusive privilege was concerned. Crescent City Slaughter House Co. vs. New Orleans, 33 A. 939. It held that those articles of the State Constitution amounted to a withdrawal of the particular police power delegated to the complainant by its charter. But even that Court held that "so far as the police regulations *touching the subject mat-*
"*ter of the limits within which the landing, keeping and slaughtering*
"*of animals, prescribed by the Act 118, are involved, Article 248 of*
"*the Constitution of 1879 does not repeal them. The selection and in-*
"*dication of the limits and localities are fixed by the Act ; they do not*
"*fall within the objections to irrevocable grant of police powers dis-*
"*cussed above and considered in the decisions quoted. Until amended*
"*or repealed as regards the mere limits prescribed, they continue in*
"*force or effect.* The Act becomes inoperative only so far as it is "abrogated by the constitutional provisions mentioned." Id. p. 940.

This interpretation of the Constitution leaves in full force Act No. 118 so far as the limits are concerned, within which the slaughtering business may be conducted. If this be so, the City of New Orleans was without power to change those limits, for the power conferred on the city authorities, by Article 248 of the Constitution, as interpreted by the Supreme Court of Louisiana, is the power "of regulating the slaughtering and other live stock within the city limits," and it may designate *the places for slaughtering*, but it cannot change the limits fixed by the Legislature, whithin which slaughtering may be done, although it may designate the *places* within the limits prescribed by the legislature, where the business of slaughtering may be conducted.

The Court draws a distinction between "limits" and "places." The Legislature can fix the limits, but the City, with approval of the Board of Health, may designate the *places*, within those limits.

An examination of Article 248 of the Constitution, will show

that so far as *stock yards and landings* are concerned, the charter of the complainant is not repealed by that Article, for as to them, the City can exercise no power of regulation; the power delegated to the City is confined to the regulation of "the slaughtering of cattle and other live stock," provided no monopoly shall exist, nor the business of *slaughtering* be "restricted to the land or houses of any individual or corporation," "and provided the ordinances designating the *places for slaughtering* shall obtain the concurrent approval of the Board of Health or other sanitary organization."

In this view of the case, the ordinance specified in the plea, is not an ordinance designating "places" where slaughtering may be done, but an ordinance fixing the "limits" within which the business may be carried on, nor does it justify the defendant in constructing "*live stock landings* within said limits."

The City had no power to fix the limits within which slaughtering may be done, though it might designate *places* within the limits fixed by the Legislature, where the business may be carried on; but its power over live stock landings was not delegated to the City by the Constitution.

It is true the plea uses the word "places," but it is evident that it is used as synonymous with the word "limits." The language of the plea is, "that the City of New Orleans did pass an ordinance regulating slaughter houses, abattoirs, etc., in the limits of the City of New Orleans, and designating *limits or places* where slaughter houses might be erected, and carried on in the City of New Orleans, designating Reynes street, Goodchildren street, the Mississippi river and the lower line of the Parish of Orleans as the *place or limits* within which slaughter houses might be built." The territory described is a very large portion of the City of New Orleans on the east bank of the river, and is above the United States Barracks, which I have shown to be the lower line of the City's boundaries. The Act of 1869 prohibits slaughtering on the east bank of the Mississippi river above the United States Barracks, that is to say, it prohibits slaughtering in any part of

the City on the east bank of the river. The fact is, the slaughter houses of the complainant are located in the Parish of St. Bernard, below the United States Barracks.

The alleged ordinances have destroyed the entire policy of the Legislature, and opened to invasion by slaughter houses a territory embracing nearly one-third of the Third Municipal District, for Reynes street is about fifteen squares above the United States Barracks, which forms the lower line of the City. I annex a printed pamphlet containing Act 118 in full.

Respectfully submitted,

THOS. J. SEMMES,

Of Counsel for Appellee.